

## Board of Adjustment

### *Staff Report*

**CASE NUMBER:** BOA18-00425  
**LOCATION/ADDRESS:** 145 N. Fraser Drive West  
**COUNCIL DISTRICT:** District 4  
**STAFF PLANNER:** Kim Steadman  
**OWNER:** Anthony M. Moreno  
**APPLICANT:** Pew and Lake, PLC

**REQUEST:** *Requesting a variance to allow a setback encroachment in the RS-9-HD District.*

#### **SUMMARY OF APPLICANT'S REQUEST**

The applicant is requesting a variance to allow a residential addition to be built in the required 10' side setback in the RS-9-HD District.

#### **STAFF RECOMMENDATION**

*Staff recommends **denial** of case **BOA18-00425**.*

#### **SITE CONTEXT**

**CASE SITE:** Existing Single Residence – Zoned RS-9-HD  
**NORTH:** (Across 2<sup>nd</sup> Street) Existing single residence – Zoned RS-9-HD  
**EAST:** (Across alley) Existing single residence – Zoned RS-9-HD  
**SOUTH:** Existing single residence – Zoned RS-9-HD  
**WEST:** (Across Fraser Drive West) Existing single residence – Zoned RS-9-HD

#### **STAFF SUMMARY AND ANALYSIS**

The parcel in question is Lot 47 of the 1946 recorded subdivision "Fraser Fields" which is located north and west of the northwest corner of Main Street and Stapley Drive. The home was originally built in 1950. In 2017 the owner obtained a building permit to expand the residence toward the side street north of the residence. Mesa Zoning Ordinance (MZO) Section 11-5-3 establishes a 10' minimum side yard setback adjacent to a side street. The permit plans correctly identified a 10' side setback, but the dimension for the addition was in error, resulting in a 3' encroachment into the required setback.

A neighbor noticed the building was too close to the street and asked staff to investigate. Staff confirmed the encroachment. A stop-work order was placed on the project, and the applicant is now requesting a variance to allow a ±28'-long portion of the residence to encroach 3' into the side setback along the side street (2<sup>nd</sup> Street).

The following table summarizes the minimum required development standards for the RS-9 District in comparison to the proposed request:

	Minimum RS-9 standards	Proposed
Lot Size	9,000 SF	12,624 SF
Yard Setbacks		
Front	15' to porches 30' to garages and carports	±41' to porch ±41' to carport
Interior Side, Minimum*	7'	10' (south side)
Street Side*	10'	7'
Rear	25'	35'
Utility Easements**	Encroachments are not permitted	No easements on this lot
Coverage	45% Maximum	29%

\*MZO 11-5-7.A.3 allows a 2' encroachment into side setbacks. Up to 1/3 of the side of the residence can encroach.

\*\*MZO 11-5-7.A.1 prohibits any projection to extend closer than 2' to an interior lot line or into a public utility easement.

#### **Variance – Encroachment into Side Yard Setbacks**

Because this parcel is a corner lot, a minimum 10' street side setback is required on the north side of the lot. The addition is proposed at 7' from the north property line. The applicant is requesting a variance to allow a 7' setback, which translates to a 3' encroachment into the street side yard setback.

#### **2-Foot Encroachment Allowed**

MZO 11-5-7.A.4 allows a 2' encroachment into a side yard for projections such as “vestibules, bay windows, nooks, chimneys or similar wall projections...” provided the projecting element is limited to 1/3 of the length of the building wall. In any case no projection is permitted within 2' of lot lines. The proposed 3' encroachment exceeds Code by one foot. The 28' length of the projecting element equals about 54% of the length of the residence, exceeding the 1/3 cap on the length of projections.

#### **Summary of Applicant's Justification**

As justification for the requested variances, the applicant cites special circumstances that apply to the property:

Applicant's Stated Special Circumstance	Staff Discussion
The home's significant front yard setback	The aerial photo, below, confirms the setback is greater than other houses on the same side of the street.
Special requirements because this property is within a historic district.	All other properties in Fraser Fields are in the same historic district. A bedroom addition in the front yard would not be appropriate in the context of this historic neighborhood, but a minor reduction in the size of the addition would have brought it into compliance with Code.
City error in plan approval.	The plans approved by the City correctly identified the 10' required setback. The error in the plans was the dimension of the addition. The plans did not include a full string of dimensions that would have allowed the plan reviewer to identify the plan error. The applicant is responsible for providing correct plans, and for

	building to Code.
Visual minimization of the reduced setback with a solid six-foot high wall along the northern property line.	



To approve the variance, the Board must find the following items to be present:

1. There are special conditions that apply to the land or building.
2. The special condition was pre-existing and not created by the property owner.
3. That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.
4. The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.

Item #1: There are special conditions that apply to the land or building.

The subject parcel is large and rectangular, and relatively consistent in size and shape to other parcels in the surrounding area. The lot does not have an unusual shape and at 12,624 SF is larger than the minimum 9,000 SF lot size for the RS-9 District. The subject property is within a historic district, as is the entire neighborhood, making all properties subject to the same historic constraints.

Item #2: The special condition was pre-existing and not created by the property owner.

The lot size and shape were created through a plat for the Fraser Fields subdivision in 1946 and not by the current property owner. The placement of the residence on the lot in 1950 was not by the current owner. The request for a variance to encroach is the result of a drafting error which is the responsibility of the current owner. The historic district overlay was in place before the current owner bought the property.

Item #3: Strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.

The 10' street-side setback applies to residential districts RS-6 through RS-35, so it is hard to justify a variance for this large, rectangular lot. Code also allows for a 2' encroachment into a side yard (for a projection that is limited to 1/3 the length of the house). A minor reconfiguration of the addition would bring it into compliance with Code. Strict compliance with Code would not deprive the property of privileges enjoyed by other properties in the RS-9-HD district.

Item #4: The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.

As stated earlier, the development standards being applied to this lot also apply to all other lots in the same single residential zoning district, and within the Fraser Fields historic district. Staff finds the variance as proposed does not meet the requirements for granting a variance. Staff believes that the requested encroachment for the addition would grant a special privilege to the applicant and is not justified.

The request for a variance to encroach into the side yard setback is not justified. The lot is of a regular shape and exceeds the minimum width and depth requirements. Unusual topographic features, such as a steep slope or a significant wash, are not present on the lot. Lacking any special conditions inherent to the physical property itself, the proposed variance would constitute a special privilege unavailable to other properties in the vicinity and zoning district. As such, staff recommends that the Board deny the requested variance.

**FINDINGS:**

1. The original home was built in 1950 within the RS-9 zoning district.
2. The lot is a standard shaped lot with frontage on two streets.
3. Lots of similar size and shape are found within the surrounding area.
4. The lot exceeds the minimum size for a standard RS-9 zoned lot with an area of 12,624 square feet.
5. The residential addition is noted on the construction plan as 1,377 square feet.
6. The lot does not have any unique or special conditions inherent to the site.
7. The applicant has not provided sufficient justification pertaining to the physical characteristics of the property.
8. Granting this variance would constitute special privileges not available to other property owners in the vicinity or in the same zoning district.

### **ORDINANCE REQUIREMENTS:**

#### **MZO 11-5-7.A: Supplemental Standards Applicable to All Residential Districts**

Building Projections into Required Yards. Building projections may extend into required yards, subject to the following standards:

1. No projection may extend into a public utility easement or closer than 2 feet to an interior lot line.
2. Awnings, eaves, overhangs, or basement window wells may encroach up to 3 feet into any required yard.
3. Vestibules, bay windows, nooks, chimneys, or similar wall projections with or without footings may encroach ... not more than 2 feet into any required side yard, provided the aggregate width of all such projections adjacent to any yard does not exceed 1/3 of the length of the building wall.

#### **Chapter 80 - Variances**

##### **MZO 11-80-3: Required Findings:**

A variance shall not be granted unless the Zoning Administrator, when acting as a Hearing Officer, or Board of Adjustment shall find upon sufficient evidence make a determination:

- A. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, and
- B. That such special circumstances are pre-existing, and not created by the property owner or appellant; and
- C. The strict application of the zoning Ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district; and
- D. Any variance granted will assure that the adjustment authorized shall not constitute a grant of special
- E. privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.