



City of Manzanita

P.O. Box 129, Manzanita, OR 97130-0129
Phone (503) 368-5343 Fax (503) 368-4145

STAFF REPORT

TO: Manzanita Planning Commission

FROM: Walt Wendolowski, Contract Planner

SUBJECT: Planning File - Allen Variance
May Continuation Report

DATE: May 10, 2021

I. BACKGROUND

- A. **APPLICANT:** Judith Allen.
- B. **PROPERTY LOCATION:** The property is located on the west side of Cherry Street, approximately midway between Ocean Avenue and High Avenue. The County Assessor places the land within Township 3 North; Range 10 West; Section 29BA; Tax Lot #13100.
- C. **PARCEL SIZE:** The property contains approximately 4,600 square feet.
- D. **EXISTING DEVELOPMENT:** The subject property is a corner lot with Cherry Street bordering the site along the east and Cherry Loop, a private street, providing access from the north. The lot is served by public sewer and water.
- E. **ZONING:** The parcel is zoned Medium Density Residential (R-2).
- F. **ADJACENT ZONING AND LAND USE:** All adjacent land is zoned R-2, with single family homes the dominant land use.
- G. **REQUEST:** The applicant is requesting approval of a Variance to reduce a required yard setback from 12-feet to 8-feet.
- H. **DECISION CRITERIA:** This application will be evaluated against the following: Manzanita Ordinance 95-4 Section 8.020 (Variance Criteria) and Section 3.010(3) (Standards for the Medium Density Residential Zone).

II. APPLICATION SUMMARY

- A. The applicant wishes to construct a home on the identified lot with primary access (frontage) from Cherry Loop. Ordinance 95-4, Section 3.010(3) establishes specific development standards in the R-2 zone. Subsection “(d)” addresses the requirements for side yard and street side setbacks, stating the following:
- (d) *The minimum side yard setback shall be 5 feet for the portion of the building at the setback line up to 10 feet in height as measured vertically from average finished grade to the highest point of that portion of the building and shall be 8 feet for any portion of the building where this height is exceeded; except that a roof with a pitch of less than or equal to 8 in 12 may extend upward from the 5 foot setback line to the 8 foot setback line. The street side yard setback of a corner lot shall be 12 feet.*
- B. The proposed residence will be setback 8-feet along Cherry Street. A Variance is necessary to construct the home as the proposed setback modifies the Ordinance standard. This action is subject to a public hearing and review by the Planning Commission.
- C. The Planning Commission heard the application at their April 12, 2021 meeting. Based on comments made at the meeting, the Commission agreed to end public testimony and continue the hearing until May 17, 2021. Subsequently, the applicants submitted additional information, including a report from an engineering geologist and two plot plans identifying the buildable area with the required 12-foot setback and proposed 8-foot setback. In addition, applicant’s civil engineer submitted a further letter of support. Comments in this report respond to the criteria, incorporating the additional submitted material.

III. CRITERIA AND FINDINGS –VARIANCE

- A. Article 8 contains the provisions to address variance applications. Section 8.010 notes the Planning Commission may authorize variances from the requirements of this Ordinance where it can be shown that owing to special and unusual circumstances related to a specific lot, strict application of the Ordinance would cause an undue or unnecessary hardship. No variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located.

FINDINGS: The proposal would reduce a required setback to construct a residence. This request does not establish a new use, or one that is otherwise prohibited, within the zone.

B. Section 8.020 establishes the specific review criteria. Each criterion, and associated finding, is noted below:

1. Exceptional or extraordinary circumstances apply to the property and result from lot size or shape, topography, or other circumstances over which the owners of the property have no control.

FINDINGS: The applicant originally submitted an assessment from a civil engineer regarding the site's topography. While the report concluded the setback reduction along Cherry Street ". . . would have no adverse impacts to the roadway or nearby properties(.)", the report did not identify any particular issues or constraints with the site that prohibit construction of a residence complying with the minimum 12-foot setback requirement.

The applicants subsequently submitted a report by an engineering geologist. The report clearly identified issues with constructing a home on the property. The engineering geologist indicated ". . . a home on this lot would require engineered retaining walls, possible shored excavations, and deep foundations, particularly on the steeply sloping south end and along the southwestern lot boundary. Some grading would be expected to structurally fill the closed depression on the northern end of the lot."

However, the engineering geologist report also noted the analysis did not include the review of a ". . . site plan or design concept sketch for a proposed home . . ." It appears, then, the analysis was general as to construction issues but did not identify any specific issues associated with the land as to why a home could not be placed with the required setback areas. Therefore, there does not appear to be an extraordinary circumstance that warrants a reduction in the setback.

2. The variance is necessary for the preservation of a property right of applicant substantially the same as owners of other property in the same zone or vicinity possess.

FINDINGS: While denial of the variance may preclude building a specific home, it does not prohibit or restrict development of the site for a residence. This is supported by the engineering geologist report which identified specific construction improvements to address site issues but did not categorically conclude a home could not be built of the site, or, there are prohibitions or restrictions as to location.

3. The variance would not be materially detrimental to the purposes of the Ordinance, the Comprehensive Plan, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City policy.

FINDINGS: Based on the written submission, the applicant's civil engineer stated the setback reduction would not adversely impact the adjacent roadway or nearby properties. This based on Cherry Street dead-ending some 400-feet to the south, and, potential impacts limited to residences located to the east. While the setback reduction places a residence closer to the road, the potential impact might be somewhat mitigated as the reduction is for a side yard and does not place the home's frontage and access closer to the street.

4. Variance request is the minimum variance which would alleviate the hardship.

FINDINGS: The applicant did not identify a particular hardship associated with the property that required a reduction in the setback. There was also no evidence as to why a lesser setback would not be possible.

- C. While the reduction may not have significant impact, there is no evidence the setback variance is the result of an extraordinary condition or circumstance that is beyond the control of the property owner. This is evident from the engineering geologist report concluding, that while certain construction and improvements requirements will be necessary to construct a home, there is nothing associated with the site that prevents the applicants from locating the home in compliance with the setback requirements. The right to a residence is fully maintained.

IV. RECOMMENDATION

City staff finds the proposal complies does not comply with the decision criteria in Article 8 and therefore recommends the Planning Commission deny the application.

V. PLANNING COMMISSION ACTION

- A. The Planning Commission has the following options:
 1. Deny the application, adopting findings contained in the staff report;
 2. Deny the application, adopting modified findings;
 3. Approve the application, establishing findings and/or conditions as to why the application complies with the decision criteria.
- B. Staff will prepare the appropriate document for the Chair's signature.