



Planning Department

130 6TH STREET WEST
ROOM A
COLUMBIA FALLS, MT 59912

PHONE (406) 892-4391

FAX (406) 892-4413

AGENDA

Columbia Falls Area Board of Adjustment TUESDAY OCTOBER 23, 2018 6:00 PM

The Columbia Falls Board of Adjustment will meet on Tuesday, October 23, 2018 at 6:00 pm in the Council Chambers of City Hall in Columbia Falls, Montana.

- I.** Call to order and roll call
- II.** Public Comment (Items not on the Agenda)
- III.** New Business:
 - a. VARIANCE REQUEST - Minimum side corner setback. This variance would allow the owners of 805 13th Street West, William and Laura Squires, to convert the existing detached garage on the east side of the lot to an accessory apartment. The variance is required because the existing garage sits 12-feet from the side corner lot boundary and the City Zoning Code requires a setback of 15-feet. The property is described as Lot 10 of Block 16 of Kennedy's Addition in Section 17, Township 30 North, Range 20 West, P.M.M. Flathead County.
 - a. Adopt Staff Report CV-18-01 as findings of fact.
 - b. Approve, amend or deny the Variance Request
 - b. VARIANCE REQUEST - Minimum front and side yard setback. This variance would allow the contract buyers of 503 2nd Avenue East, Katrina and Jay Larsen, to remodel and place a new foundation under the existing house that sits within the front and north side setback. If granted the variance would allow the applicants to remodel and upgrade the existing structure within the existing footprint with the exception of a small proposed carport. The property is described as Lot 1 of Block 34 of Columbia Falls Townsite in Section 8, Township 30 North, Range 20 West, P.M.M. Flathead County.
 - a. Adopt Staff Report CV-18-02 as findings of fact.
 - b. Approve, amend or deny the Variance Request

Persons may testify at the hearing or submit written comments prior to the meeting to City Clerk Barb Staalnd, 130 6th St West, Columbia Falls, MT 59912 or email: staalndb@cityofcolumbiafalls.com. For more information on either variance contact Eric H. Mulcahy, City Planner at 755-6481.

IV. Comments from Board and Staff

V. Adjourn



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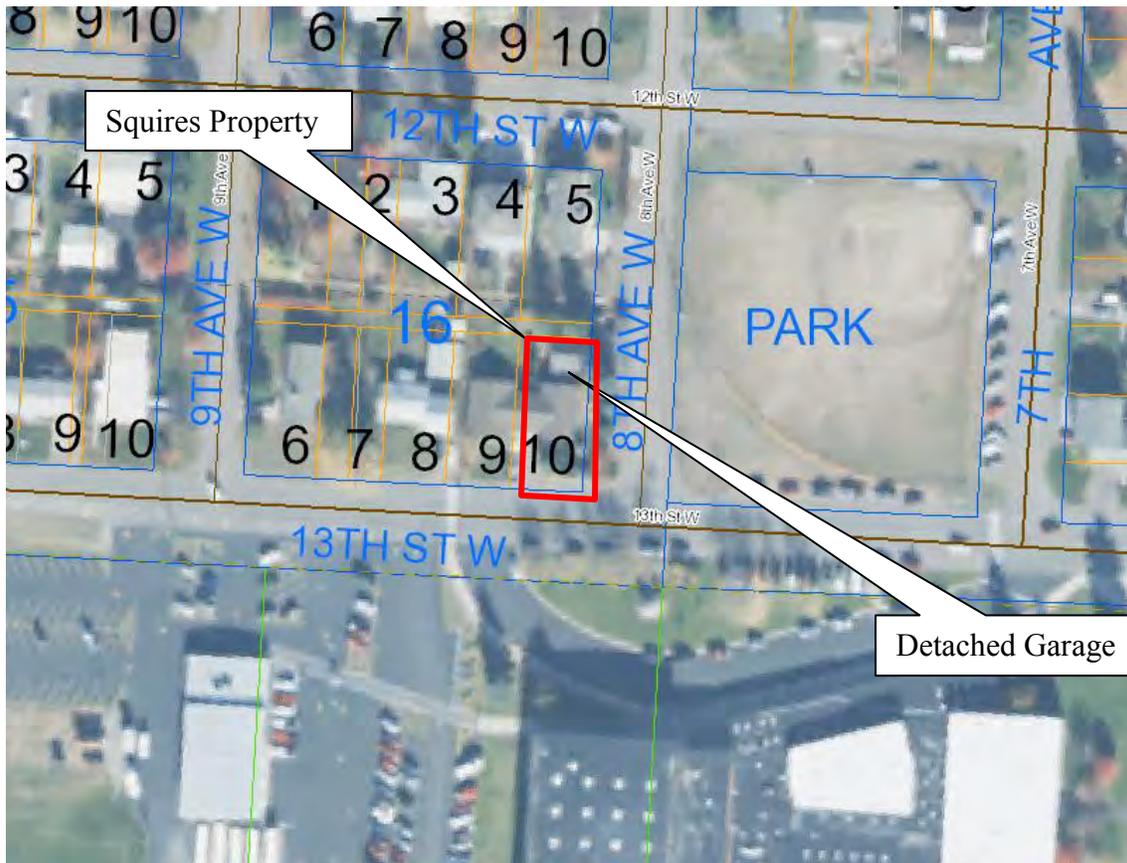
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BOARD OF ADJUSTMENT REVIEW REPORT CV-18-01

Title: William and Laura Squires
Subject: Request to encroach into the 15 foot side corner setback
Date: October 16, 2018
Prepared By: Eric H. Mulcahy, AICP - City Planner

Location:

Property is located at 805 13th Street West and is described as Lot 10, Block 16 of Kennedy's Addition in Section 17, Township 30 North, Range 20 West, Flathead County, Montana.



Background:

The applicants own the townhouse at 805 13th Street West. The detached garage was built by the previous property owner. Apparently, the garage was constructed in 2004.

The notes in the building permit file indicate that the property owner was supposed to locate the corners and mark the setback. However, after the garage was substantially complete the building inspector found that the property owner could not find the corner pins and more or less guessed at their location; this would explain why the garage is only 12 feet from the 8th Avenue West property boundary even though the setback for the side corner is 15-feet. Fourteen years after the structure was built the City classifies this structure as a legal non-conforming use or “grandfathered”.

The applicants are requesting a variance because they want to convert the garage into an accessory apartment. The Columbia Falls Zoning Code provides a mechanism to build or convert space into an accessory apartment provided the new use meet setback. As the garage stands, it is three feet shy of meeting the side corner setback.

Application:

The property is zoned CR-5 (Two Family Residential) in the Columbia Falls Zoning District. The proponent is requesting a variance to 18.330.040.C.3 –Side Corner: 15 Feet. Specifically, the applicant requests the variance to convert the existing garage into an accessory apartment.

18.330.040 Bulk and dimensional requirements.

The bulk and dimensional requirements for the CR-5 district are as follows:

- A. Minimum lot area: nine thousand six hundred (5,400) square feet;
- B. Minimum lot width: eighty (45) feet;
- C. Minimum yard requirements:
 - 1. Front: twenty-five (25) feet;
 - 2. Side: five (5) feet each;
 - 3. Side corner: fifteen (15) feet;
 - 4. Rear: twenty (20) feet;

Procedure for Consideration:

The Board must find that the following conditions have been met by the property owner: 18.209.030 Procedure for Consideration.

- C. Findings are required to be made by the board for approval of a variance. No variance shall be granted unless the board finds all the following conditions are met or found to be not pertinent to the particular case:
 - 1. Strict compliance with the provisions of this title will:
 - a. Limit the reasonable use of the property, and
 - b. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district.
 - 2. The hardship is the result of lot size, shape, topography or other circumstances over which the applicant has no control.
 - 3. The hardship is peculiar to the applicant property.

4. The hardship was not created by the applicant.
5. The hardship is not economic (when a reasonable or viable alternative exists).
6. Granting of the variance will not adversely affect the neighboring properties or the public.
7. The variance requested is the minimum variance which will alleviate the hardship.
8. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

Finding:

The staff considered the proponents arguments with respect to the following conditions:

1. *a. Strict compliance:* strict compliance would allow either require the applicants to move the structure back three feet or maintain the “grandfathered” structure as a garage. As stated in the Background Section, the garage was constructed in the Side Corner setback even though the City conducted building permit compliance. It would appear that the non-compliance came to light in the course of construction but that the Building Inspector at the time determined that both parties had some fault in the location and allowed the construction to finish.
 - b. Deprive the applicant of rights:* The applicant has the right to use the existing garage as a “grandfathered” or “non-conforming” structure. Accessory Apartments are granted through the issuance of a Conditional Use Permit (CUP). CUP’s are granted by grace as opposed to right per the Zoning Code. That being said, should the mistake of a previous land owner deprive the applicant the right to request a CUP for an accessory apartment?
2. *The hardship is the result of lot size, shape, topography or other circumstances over which the applicant has no control:* The hardship is the result of the existing structure being built three feet too close to the side corner property line. The applicant did not construct this garage and may not have even known it was non-conforming until they began the Accessory Apartment process.
 3. *The hardship is peculiar to the applicant property:* The hardship is unique to this property. It is indeed a rare occurrence that the Building Department would miss a setback. It is standard procedure to require applicants of new buildings to locate the corner pins and yellow line the setbacks so that the foundation location can be verified prior to pouring a foundation. Something happened during this building permit process that we don’t typically see around the City and is therefore unique.

4. *The hardship was not created by the applicant:* The detached garage was constructed by a previous land owner and the Squires purchased the property with the garage in its present location.
5. *The hardship is not economic (when a reasonable or viable alternative exists):* The hardship could be looked at as economic because the applicants do have the room on the property to move the structure back and meet the setback. However, is it reasonable to require the applicants to go through that expense to convert the structure from a garage to an accessory apartment? One could argue that it would be an unreasonable request to move the structure.
6. *Granting of the variance will not adversely affect the neighboring properties or the public:* The 15-foot side corner setback is intended to provide clear vision around corners and not crowd the street right-of-way.



The existing garage sits about half way in the lot and therefore does not block the clear vision triangle from either the alley way or the 13th Street/ 8th Avenue intersection



Granting of the variance will pose no safety concerns with the clear vision and as the garage is a legal non-conforming structure, approving or denying the variance will not make the structure go away, so it should not pose a nuisance to neighboring land owners.

7. *The variance requested is the minimum variance which will alleviate the hardship:* The variance to allow the conversion of use to an accessory apartment in its present location would appear to be the minimum that the applicants could ask for. Any other option would require moving the structure and if they were to move the garage they could meet the setback and the variance request would be moot.
8. *Granting the variance will not confer a special privilege that is denied other similar properties in the same district:* This specific variance request is unique. Staff is not aware of any other situations where a garage was constructed with a building permit in the setback. Secondly it is the change in use that causes the City to review the setback for compliance.

Summary:

Staff concurs that the applicant has property that does qualify for a variance under each of the eight prescriptions required in 18.209.030.

Specifically, the applicant requests a variance to request a CUP for the conversion of the garage to an accessory apartment in its present location which is 12 feet from the side corner property line. The applicant purchased the property with the non-conforming garage; it was a previous property owner that constructed the garage three feet into the setback.

RECOMMENDATION:

Staff recommends that the Board find that the applicant has met the variance criteria and grant said variance so that the applicants can apply for the Administrative CUP to convert the garage that encroaches three feet into the side yard setback, into an accessory apartment.

CITY OF COLUMBIA FALLS NOTICE OF PUBLIC HEARING

The COLUMBIA FALLS BOARD OF ADJUSTMENT will hold a public hearing on Tuesday, October 23, 2018 at 6:00 p.m. in the Council Chambers of City Hall, 130 6th Street West, Columbia Falls regarding the following:

VARIANCE REQUEST - Minimum side corner setback. This variance would allow the owners of 805 13th Street West, William and Laura Squires, to convert the existing detached garage on the east side of the lot to an accessory apartment. The variance is required because the existing garage sits 12-feet from the side corner lot boundary and the City Zoning Code requires a setback of 15-feet. The property is described as Lot 10 of Block 16 of Kennedy's Addition in Section 17, Township 30 North, Range 20 West, P.M.M. Flathead County.

VARIANCE REQUEST - Minimum front and side yard setback. This variance would allow the contract buyers of 503 2nd Avenue East, Katrina and Jay Larsen, to remodel and place a new foundation under the existing house that sits within the front and north side setback. If granted the variance would allow the applicants to remodel and upgrade the existing structure within the existing footprint with the exception of a small proposed carport. The property is described as Lot 1 of Block 34 of Columbia Falls Townsite in Section 8, Township 30 North, Range 20 West, P.M.M. Flathead County.

Persons may testify at the hearing or submit written comments prior to the meeting to City Clerk Barb Staalnd, 130 6th St West, Columbia Falls, MT 59912 or email: staalndb@cityofcolumbiafalls.com. For more information on either variance contact Eric H. Mulcahy, City Planner at 755-6481.

Dated this 4th day of October, 2018

Susan Nicosia, City Manager/Zoning and Planning Administrator

COLUMBIA FALLS BOARD OF ADJUSTMENT



Planning Department

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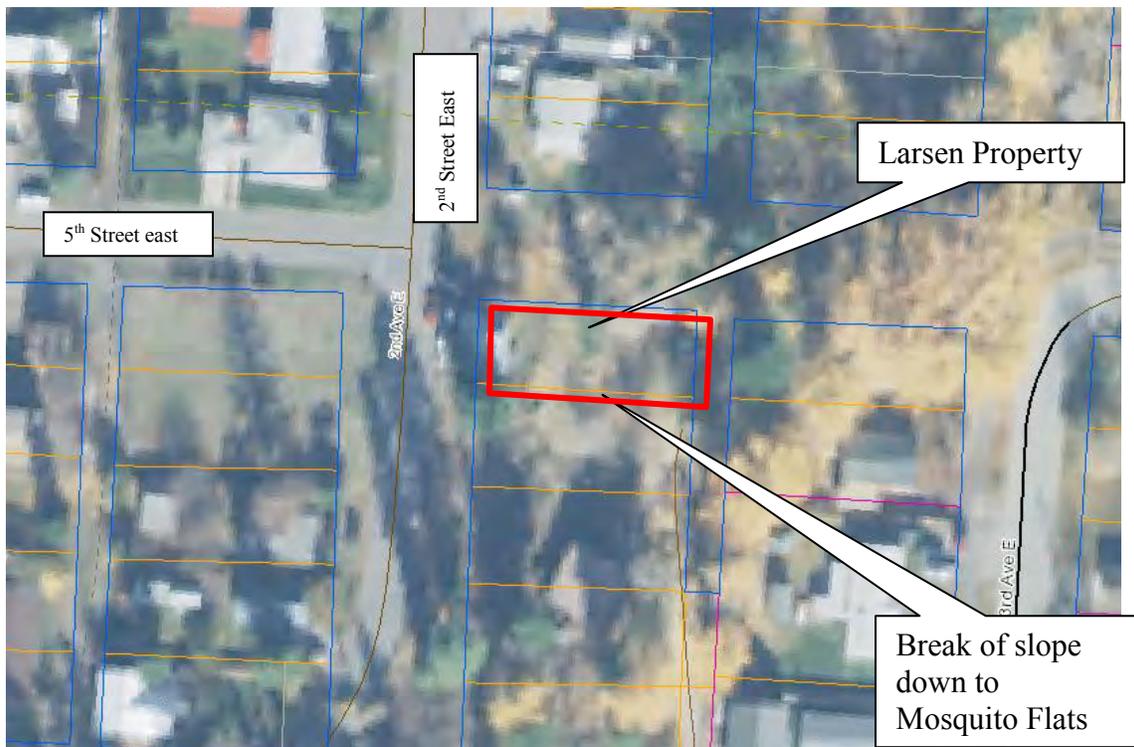
FAX (406) 892-4413

BOARD OF ADJUSTMENT REVIEW REPORT CV-18-02

Title: Katrina and Jay Larsen
Subject: Request to encroach into the 25 foot front and the 15 foot side corner setback
Date: October 16, 2018
Prepared By: Eric H. Mulcahy, AICP - City Planner

Location:

Property is located at 503 2nd Avenue East; and is described as Lot 1, Block 34 of Columbia Falls Original in Section 8, Township 30 North, Range 20 West, Flathead County, Montana.



Background:

The applicants are in the process of purchasing the house at 503 2nd Ave East. The house was constructed in the 1920's before most of the streets were built and definitely before they were paved. This particular house encroaches 8'-6" into the Columbia Falls street

right-of-way. The house also sits within two feet of the north property line which is the side corner. The existing house does not meet the front or side corner setback.

Most likely the reason the house sits in the right-of-way is that this property sits on the edge of the bluff that overlooks Mosquito Flats and River's Edge Park. This is also the reason that the segment of 5th Street East that fronts the north side of the applicant's property was never constructed as it is too steep.

The Columbia Falls Original subdivision was created as a paper plat in 1913 meaning that the developer at the time most likely never visited the site and therefore did not consider topographic features in the subdivision layout. Although the City will never construct this segment of 5th Street East because a road could not be constructed that would meet City standards for a safe grade, the City does not want to abandon the Right-of-Way because it may be useful for utilities in the future. Therefore, this is considered a corner lot.

The applicant requests a variance to lift the house and build a new foundation, as well as, do any up-grades needed to the existing house to make it compliant with current building code and a livable residence. The house is currently in a state of deterioration and would be considered not livable by most. Work could include a new roof, new siding, new electrical, new plumbing, new floors, moving the entrance. The applicant is also requesting a variance to construct a new carport that would also encroach into the City's right-of-way

The City Public Works Department reviewed the requested variance and with the exception of the new carport, has no objection to the request.

Application:

The property is zoned CR-4 (Urban Residential) in the Columbia Falls Zoning District. The proponent is requesting a variance to 18.328.040.C.1 & 3 – Front: 25 feet and Side Corner: 15 Feet. Specifically, the applicant requests the variance to refurbish/rebuild the existing house on its existing footprint. They also request a variance to construct a new carport within the front yard setback and ROW to match the existing house

18.328.040 Bulk and dimensional requirements.

The bulk and dimensional requirements for the CR-4 district are as follows:

- A. Minimum lot area: nine thousand six hundred (7,200) square feet;
- B. Minimum lot width: eighty (60) feet;
- C. Minimum yard requirements:
 - 1. Front: twenty-five (25) feet;
 - 2. Side: five (5) feet each;
 - 3. Side corner: fifteen (15) feet;
 - 4. Rear: twenty (20) feet;

Procedure for Consideration:

The Board must find that the following conditions have been met by the property owner:

18.209.030 Procedure for Consideration.

- C. Findings are required to be made by the board for approval of a variance. No variance shall be granted unless the board finds all the following conditions are met or found to be not pertinent to the particular case:
1. Strict compliance with the provisions of this title will:
 - a. Limit the reasonable use of the property, and
 - b. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district.
 2. The hardship is the result of lot size, shape, topography or other circumstances over which the applicant has no control.
 3. The hardship is peculiar to the applicant property.
 4. The hardship was not created by the applicant.
 5. The hardship is not economic (when a reasonable or viable alternative exists).
 6. Granting of the variance will not adversely affect the neighboring properties or the public.
 7. The variance requested is the minimum variance which will alleviate the hardship.
 8. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

Finding:

The staff considered the proponents arguments with respect to the following conditions:

1. *a. Strict compliance:* strict compliance would allow construction of a much smaller addition to the residence. Due to the steep slope on the eastern portion of the lot there would be no way to move the house back and comply with the 25 foot front yard setback. There is not even sufficient room to move the home back and out of the right-of-way because it would not be viable to go through that expense for such a small house. Since the house has set in these setbacks for almost 100 years with no harm to the City or the neighbors, staff supports the variance provided it does not increase in non-conformity. To this end, staff is recommending that the proposed carport and/or garage be moved to the east so that the construction is located within the applicant's property and outside of the City's ROW.

- b. Deprive the applicant of rights:* If the variance was to be denied, it would be likely that the house would continue to deteriorate until it fell apart or was condemned. Given the steep slope is located 25 to 48 feet from the City's Right-of-way it would be hard to construct any kind of a new house on the property without a variance. Denial of the variance would deprive the applicant of rights enjoyed by the previous lot owners for the past 100-years.

2. *The hardship is the result of lot size, shape, topography or other circumstances over which the applicant has no control:* Almost two thirds of the 125 foot deep lot falls over the bank that slopes down to Mosquito Flats. This steep bank is not suitable for construction and results in a hardship for the property owner
3. *The hardship is peculiar to the applicant property:* The hardship is unique to this property. There are other lots located along this bluff but most of those had enough room to build a house meeting the setbacks or there was no room on the lots and they were never constructed on. This is the only lot staff is aware of where the house was built prior to City street construction and in the City's ROW.
4. *The hardship was not created by the applicant:* The established hardship pre-dates these applicants by at least a couple generations. The existing home was constructed in to present position back in the 1920's. Other than the proposed carport, the applicants are not proposing additional encroachments into the setbacks or ROW. Modification/upgrades will follow the existing house footprint. Staff does not support the encroachment of the carport into the City's right-of-way but does support the construction of the carport and garage on the south side of the lot provided it meets the five foot side yard setback and is located totally within the confines of the applicants' lot.
5. *The hardship is not economic (when a reasonable or viable alternative exists):* The hardship is not economic. The hardship is based on the topography.
6. *Granting of the variance will not adversely affect the neighboring properties or the public:* Granting of the variance will have no impact on neighboring properties as the home has been in existence before many of the neighboring homes. In addition if granted the variance will allow the new owners to upgrade the home improving its property value and that of its neighbor's.

The Third Avenue East right-of-way is 70-feet in width. The existing encroachment still leaves the City with suitable ROW width to handle traffic, drainage, and utilities. With the exception of the new carport encroachment into the right-of-way, the City staff supports the requested variance

7. *The variance requested is the minimum variance which will alleviate the hardship:* The variance to allow the remodel and new foundation of the house in its present footprint. Staff does not support the new encroachment of the carport within the ROW but does support a front yard variance provided the new structure is located on the applicant's property.

These would appear to be the minimum variances that would allow continued use of the property.

8. *Granting the variance will not confer a special privilege that is denied other similar properties in the same district:* There are few lots within the City that have this slope issue and this is the only one that staff is aware of where the house encroaches into the right-of-way due to the steep drop-off. Granting this variance would not be a case of giving special favor that would be denied others.

Summary:

Staff concurs that the applicant has property that does qualify for a variance under each of the eight prescriptions required in 18.209.030.

Specifically, the applicant requests a variance to reconstruct/remodel the existing house in its present location following the existing footprint. The applicant also requested a carport/garage that would also encroach into the City's ROW and front yard setback.

RECOMMENDATION:

Staff recommends that the Board find that the applicant has met the variance criteria and grant said variance for the home to be rebuilt in the same footprint and the existing home. Staff also recommends that the applicants be allowed to construct a carport/garage within the front yard setback but not within the City's right-of-way or the southern sideyard setback.