



Division of Development Administration and Review

City of Pittsburgh, Department of City Planning

200 Ross Street, Third Floor

Pittsburgh, Pennsylvania 15219

ZONING BOARD OF ADJUSTMENT

Date of Hearing: May 16, 2019

Date of Decision: July 18, 2019

Zone Case: 126 of 2018

Address: 3247 Ward Street

Lot & Block: 29-C-214

Zoning Districts: R1A-VH

Ward: 4

Neighborhood: South Oakland

Owner: City Studio

Applicant: OPA HI Develop LLC

Request: Lot subdivision, two new attached single family dwellings with surface parking.

Variance	903.03.E.2	Minimum 5 ft. interior side setback required and 2 ft. requested for parking
Variance	925.06.C	Minimum 3 ft. interior side setback required and 0 ft. requested for dwellings

Appearances:

Applicant: Ryan England

Observing: Liz Gray

Opposed: Elena Zaitsoff, Kim Sung Jin

Findings of Fact:

1. The Subject Property is located at 3247 Ward Street, in a R1A-VH (Residential Single-Unit Attached, Very-High Density) District in the South Oakland neighborhood. Hardie Way is located at the rear of the Subject Property.

2. The 165' by 29' (4,785 sf) Subject Property is currently vacant.

3. The Applicant proposed to subdivide the existing parcel into two separate parcels, with irregular shapes and an irregular line between the parcels. The Applicant proposes to construct an attached two-story house on each of the new lots.

4. The area of the proposed Lot 1 would be 2,178 sf, with 21'6" of frontage on Ward Street at the front tapering to 7'6" of frontage on Hardie Way at the rear.

5. The area of the proposed Lot 2 would be 2,621 sf, with 7'6" of frontage on Ward Street at the front tapering to 21'6" of frontage on Hardie Way at the rear.

6. The proposed houses would be attached on the new interior side property line and would be setback 0' from the interior side property lines, as shared with the parcels at 3253 Ward Street and 3263 Ward Street.

7. The Applicant also proposes to install a rear parking pad, with access from Hardie Street, on each of the proposed parcels, with 2' setbacks from the interior side property lines.

8. The Applicant asserted that the development of the site for a single-family dwelling on the existing 4,785 sf Subject Property, is not economically feasible in the R1A-VH District.

9. The Applicant also maintained that the narrow width of the site limits development of the site in strict conformity with the Code's requirements.

10. Two neighboring property owners appeared at the hearing to oppose the Applicant's request, citing concerns related to building mass and density.

11. The South Oakland Neighborhood Group submitted a letter in opposition to the Applicant's request, citing concerns related to the potential impact of the proposed variances on the surrounding neighborhood and the possible occupation of the dwellings by renters.

Conclusions of Law:

1. The Applicant seeks variances from Code Section 903.03.E.2 and 925.06.C, the Code's minimum interior side setback requirements.

2. Section 922.09.E sets forth the general conditions the Board is to consider with respect to variances. The Pennsylvania Supreme Court has summarized the criteria for determining whether to grant a variance as: 1) unique circumstances or conditions of a property would result in an unnecessary hardship; 2) no adverse effect on the public welfare; and that 3) variance proposed is the minimum variance that would afford relief with the least modification possible. *Marshall v. City of Philadelphia and Zoning Bd. of Adj.*, 97 A.3d 323, 329 (Pa. 2014); see also *Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh*, 721 A.2d 43 (Pa. 1998), citing *Allegheny West Civic Council v. Zoning Bd. of Adj. of the City of Pittsburgh*, 689 A.2d 225 (Pa. 1997).

3. In *Hertzberg*, the Court noted that a dimensional variance is distinct from a use variance, and is subject to a less restrictive standard, because a property owner seeking a dimensional variance asks only for a reasonable adjustment of the zoning regulations to accommodate a use of the property which the ordinance permits. *Hertzberg*, 721 A.2d at 47. Under *Hertzberg*, "the quantum of proof required to establish unnecessary hardship is indeed lesser when a dimensional variance, as opposed to a use variance, is sought." *Hertzberg*, 721 A.2d at 47-48. However, the reduced burden for a dimensional variance does not obviate the need to provide some evidence of a hardship.

4. Here, the width of the existing lot is 29'. The Applicant has designed two lots that comply with the minimum lot size requirement for the R1A-VH District, but only by creating irregularly-shaped lots, with widths that taper from front to back with a maximum width of 21'-6" to a minimum width of 7'-6".

Because of the shape and width of the lots, as created, the Applicant seeks variances from the 3' sideyard setback requirement so that two attached residential units can be located on the site.

5. Although the existing parcel is technically large enough for two lots, from a lot size and density perspective, the asserted hardship with respect to the sideyard setback requirement can only be viewed as being self-created, as a result of the proposed subdivision.

6. For this reason, consistent with the evidence and testimony presented and the applicable legal standards governing dimensional variances, the Board concludes that denial of the requested variances is appropriate.

Decision: The Applicant's request for a variance to Code Sections 903.03.E.2 and 925.06.C is hereby DENIED.



Alice B. Mitinger, Chair

For


For

LaShawn Burton-Faulk

John J. Richardson