

## **STAFF REPORT**

**Date:** July 3, 2024

**To:** Zoning Board of Adjustment

**From:** Michele Berry, Planning Manager

**Subject:** **Public Hearing:** Consideration of a Variance Request to Allow Four Townhomes to Encroach Approximately 18 Inches Into the Required 6.5-Foot Rear Yard Setback, Located at 230, 232, 234, and 236 Milton Street, Legally Described as Larry Ho Addition, Block A, Lots 2B, 2A, 1B and 1A; Zoned Old Town Mixed-Use 2 (OTMU-2), as Requested by Shamsuddin Ali of MSKM LLC, the Property Owner. (Case No. 24-06-4-ZBOA)

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### **BACKGROUND:**

The owner and developer of the townhomes located at 230, 232, 234, and 236 Milton Street was granted a Letter of Design Approval from the Old Town Design Review Committee for the exterior design of the building on June 24, 2019 and a building permit was issued on December 5, 2023. During construction, the property owner of the adjacent lot brought to staff's attention that the second-floor cantilever on the rear of the townhomes was encroaching into the rear setback. Staff reviewed the approvals granted and found that the cantilever encroachment was missed during plan review as the site plan sheet showing the cantilever did not show the building footprint, setback or property line.

### **ANALYSIS:**

The Board may approve a variance request for specific cases where granting a variance from the terms of the Zoning Ordinance will not be contrary to the public interest and, due to special conditions, a literal enforcement of the Ordinance will result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done. The variance requested is:

- a.) to allow the second-floor cantilever on the rear of the four townhomes located at 230, 232, 234, and 236 Milton Street to encroach approximately 18 inches into the required 6.5-foot rear yard setback.

Staff finds the request is consistent with the criteria for approval set forth in Section IV.1.5 of the Unified Development Code as discussed below:

- A. There are special conditions arising from the physical surroundings, shape, topography, or other physical feature affecting the land subject to the variance application, and a literal enforcement of this UDC would result in an unnecessary hardship, and a variance would observe the spirit of this UDC and achieve substantial justice.

*The property is not very deep, making front-entry townhomes challenging. The grade and drainage patterns further constrained development. The minimum depth of 18 feet for the required parking in front pushes the home towards the rear of the property. A cantilever was added to both the front and rear to allow for three bedrooms of adequate size on the second floor without adding a third floor to the townhomes.*

- B. A literal application of the UDC requirements would result in an unnecessary hardship upon or for the applicant, as distinguished from a mere economic impact, an inconvenience, frustration of objectives in developing the land, not permitting the highest and best use for the land, or depriving the applicant of the reasonable and beneficial use of the land. In determining if there is an unnecessary hardship for a variance the Board may consider:

1. If the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified by the County;

*The county has not certified an appraised value of the structure as it is still under construction. The applicant has spent \$548,000 to date so far on construction. The estimated cost of redesign, partial demolition, and reconstruction in order to bring the combined four units into compliance with the rear setback requirement is \$362,100. This exceeds 50% of the cost of construction to date.*

2. If compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;

*Compliance would not result in a loss of 25% of the building area.*

3. If compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

*Compliance would not result in the structure not being in compliance with any requirement of a municipal ordinance, building code, or other requirement.*

4. If compliance would result in the unreasonable encroachment on an adjacent property or easement; or

*Compliance would not result in any encroachments onto adjacent properties or easements.*

5. If the municipality considers the structure to be a nonconforming structure.

*The structure is not a legal nonconforming structure.*

- C. The circumstances causing the unnecessary hardship do not similarly affect all or most properties in the vicinity of or similarly classified as the applicant's land;

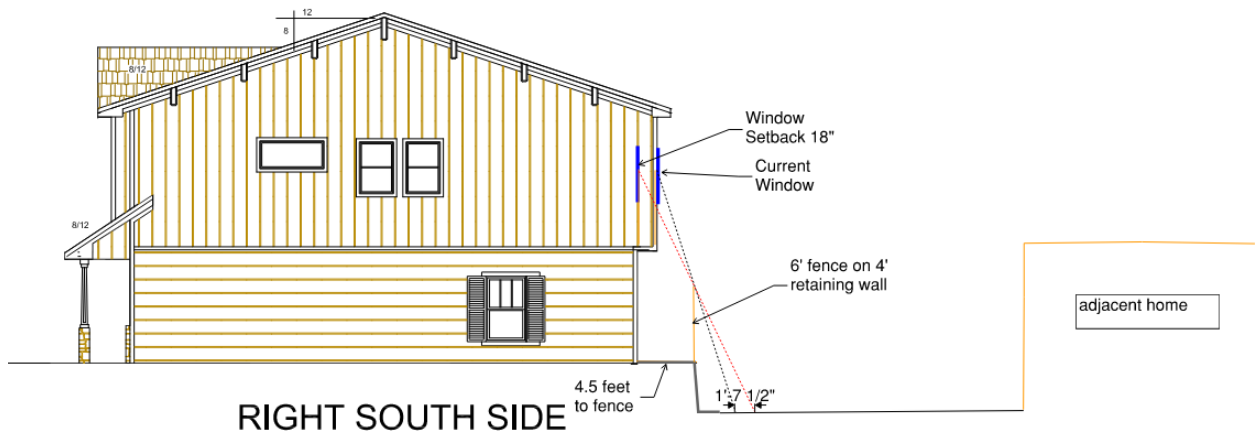
*The circumstances regarding the permit being issued with a the second-floor cantilever encroaching into the rear yard do not similarly affect all or most properties in the vicinity of or similarly classified as the applicant's land.*

- D. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;

*The applicant has the right to build townhomes on this property and has spent \$548,000 dollars in construction on the townhomes to date, and the financial cost of compliance would be greater than 50 percent of the cost to construct the structures to date.*

- E. Granting the variance shall not be detrimental to the public health, safety or welfare, or injurious to other property within the vicinity;

*Granting the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the vicinity. Although the second story windows of the townhomes overlook the backyard of the adjacent property, the view from those windows and any privacy concern would not be significantly altered if the windows were set 18 inches farther back, meeting the ordinance. If the rear cantilever was removed and the windows were set 18 inches back, only an additional 19-inch strip of the adjacent yard would be blocked from view from the windows. See below. An alternative design might have included a three-story unit, further impacting privacy for surrounding properties.*



- F. Granting the variance shall not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this UDC, or adversely affect the rights of owners or residents of surrounding property;

*Granting the variance will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this UDC, or adversely affect the rights of owners or residents of surrounding property. The building wall is a minimum of 5 feet from the property line; therefore, it does not impact redevelopment of the*

*adjacent property in terms of meeting the minimum 10-foot building separation required before additional fire protection measures are required by the building code.*

- G. The unnecessary hardship suffered by the applicant is not caused wholly or in substantial part by the applicant;

*The applicant was granted permits by the City to build with the second-floor rear cantilever encroaching over the setback due to an oversight during plan review.*

- H. The application for a variance is not based exclusively on the applicant's desire for increased financial gain from the property or to reduce an existing financial hardship;

*The purpose of the application is to allow reasonable building area for three bedrooms on the second floor and avoid the costs associated with redesign, partial demolition, and reconstruction, which would exceed 50 percent of the cost of constructing the townhomes.*

- I. The degree of variance requested is the minimum amount necessary to alleviate the unnecessary hardship of the applicant; and

*The variance requested is the minimum required to avoid redesign, partial demolition, and reconstruction of the four completed townhomes, which would exceed 50 percent of the cost of constructing the townhomes.*

- J. The variance does not authorize a use other than those permitted in the zoning district for which the variance is sought.

*This variance does not authorize any other uses.*

**RECOMMENDATION:** That the Zoning Board of Adjustment approve the requested variance as presented.