

STAFF REPORT

Date: April 3, 2024

To: Zoning Board of Adjustment

From: Michele Berry, Planning Manager

Subject: **Public Hearing:** Consideration of a Variance Request to Allow Townhomes to Encroach Approximately Three-Foot One-Inch Encroachment Into the Required Five-Foot Side Yard Setback on Leonard Street and a Zero-Foot Side Yard Setback Along the Access Drive, Located at 115 Leonard Street, Legally Described as Lots 7 and 8, Block 14, Kealy Addition; Zoned Old Town Mixed Use 2 (OTMU2), as Requested by FK +Architect, LLC, the Architect on Behalf of Old Town Villas LLC, the Property Owner. (Case No. 24-02-3-ZBOA)

BACKGROUND:

The owner and developer desires to construct townhomes on the property. Three homes will face Leonard Street and five will face Main Street. The homes facing Main Street are narrow, 18-foot wide and can only accommodate a single car garage. Additional off-street parking is provided at the rear. The side yard setbacks meet the five-foot requirement adjacent to neighboring properties. It is the five-foot side yard setback adjacent to Leonard Street and along an internal drive-aisle that requires the variance. The side yard setback along Leonard Street was originally designed to be five-foot before the applicant understood right-of-way dedication was required along Leonard Street. The variance request is the minimum required to allow the Right-of-Way dedication. The setback along the internal drive aisle is reduced to zero feet. This is along an internal drive and the lot line could be moved to be five feet off the building, but this would make maintenance of the drive aisle complicated in the long-term. Street visibility easements are maintained, and adequate distance is provided per building and fire codes. If this variance is not approved, it will reduce the number of homes able to be constructed on the site as the homes were already designed to be as narrow as practicable.

ANALYSIS:

The Board may approve a variance request for specific cases where granting a variance from the terms of the Zoning regulations of the Unified Development Code (UDC) will not be contrary to the public interest; where, owing to special conditions, a literal enforcement of the UDC will result in unnecessary hardship.

- a.) to Allow Townhomes to Encroach Approximately Three-Foot One-Inch Encroachment Into the Required Five-Foot Side Yard Setback on Leonard Street and a Zero-Foot Side Yard Setback Along the Access Drive.

Staff finds the request is consistent with the criteria for approval in Section IV.1.5 of the UDC:

- 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.

- 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:
- 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;
- D. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
- E. Granting the variance shall not be detrimental to the public health, safety or welfare, or injurious to other property within the vicinity;
- 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;
- G. The unnecessary hardship suffered by the applicant is not caused wholly or in substantial part by the applicant;
- 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;
- I. The degree of variance requested is the minimum amount necessary to alleviate the unnecessary hardship of the applicant; and
- J. The variance does not authorize a use other than those permitted in the zoning district for which the variance is sought.

Staff did receive inquiries from the owner of the adjacent 20-foot-wide property to the west indicating they were not in support of the variances as they believe it will reduce their property value. However, the requested variance is not along that side of the lot and would not impact the development of that lot. Staff provided contact information to the two parties so they could discuss mutually beneficial development opportunities.

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