

APPLICATION NUMBER

5209

A REQUEST FOR

SIDE YARD SETBACK VARIANCE TO ALLOW THE CONSTRUCTION OF A 10' X 10' STORAGE SHED WITHIN 5' FROM THE SIDE (WEST) PROPERTY LINE; A MINIMUM SIDE YARD SETBACK OF 8' IS REQUIRED FOR A 60' WIDE LOT IN AN R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT

LOCATED AT

6135 TIMBERLY ROAD NORTH

(South side of Timberly Road North, 50'+ East of the terminus of Burntwood Drive)

APPLICANT/OWNER

DAVID M. & MARCIA S. SMITHWECK

BOARD OF ZONING ADJUSTMENT

NOVEMBER 2003

The applicant is requesting a Side Yard Setback Variance to allow the construction of a 10' x 10' storage shed within 5' from the side (West) property line; a minimum side yard setback of 8' is required for a 60' wide lot in an R-1, Single-Family Residential District.

The applicant states that the construction of a 10' x 10' storage shed began in July 2003 at the southwest corner of the property located at 6135 Timberly Road North. The applicant states the site was selected for several reasons: 1) the removal of large pine trees several years ago prevented the placement of the shed any further to the east; and 2) locating the shed further to the east would impact an underground telephone cable that runs in a northeasterly direction from the southwest corner to the northeast corner of the property.

Three of the primary concerns relating to side yard setbacks are the potential for the spread of fire from one property to another, water run-off onto adjacent properties, and the ability to properly maintain the proposed structure. Other concerns relate to privacy and adequate circulation of light and air. In this case, a 10' x 10' storage was constructed within 5-feet of the side (West) property line, thus reducing the privacy of the adjacent property owners. Furthermore, construction was initiated and completed without the proper permits and inspections.

In considering such applications, the Board has rarely granted side yard setback variances for less than 5 feet, and in allowing a 5-foot setback, the proposed construction was typically "in-line" with the existing structure. In this instance, the side yard variance is for a 10' x 10' storage shed, which was constructed 5-feet from the side (West) property line.

The Board has typically considered the character of the neighborhood when reviewing applications located in older areas of the city. However this site is located in a suburban area, and as illustrated on the vicinity map, the area consists of large lots which provide more than ample room for structures to comply with the setback requirements of the Zoning Ordinance. Additionally, the lot is two times wider than the standard 60-foot wide lot, upon which setbacks are based. Another point to consider is that the storage shed could have been easily configured to comply with all setbacks by simply moving the shed three-foot eastward.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

The applicant failed to illustrate that a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to construct a 10' x 10' storage shed that is within 5-feet from the side (West) property line. The applicant should have considered locating the storage shed to meet the minimum setback requirements.

RECOMMENDATION 5209

Date: November 3, 2003

Based on the preceding, it is recommended that this application be denied.

