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helenamt.gov

DATE: September 13, 2022

STAFF REPORT

TO: Helena Board of Adjustment

FROM: Michael Alvarez, City Planner II

SUBJECT: Consideration of:

A variance from Section 11-4-2 to decrease the allowable minimum side lot line setback from 6' to 4' (east) and a variance to decrease the allowable minimum setback from 6' to 3' (west) for a property with a legal description of All that portion of Lot 3 in Block 606 of Hoback & Cannon Addition to the City of Helena, Lewis and Clark County, Montana, and more particularly described on Quit Claim Deed 558565, records of Lewis & Clark County, Montana.

This property is located at 729 9th Avenue.

The reason for this variance is to build a home out to the extent of the existing home, and to extend that new home deeper onto the property. Applicant claims the existing home's foundation is crumbling.

OVERVIEW

GENERAL INFORMATION

DATE OF APPLICATION: Application received July 28, 2022

PUBLIC HEARING DATE: Board of Adjustment - 5:30 p.m., Tuesday, September 20, 2022

PROPERTY OWNER: Randal and Marcia Warner

MAILING ADDRESS: 729 9th Ave, Helena, MT 59601

CONTACT NUMBER: N/A

EMAIL ADDRESS: N/A

APPLICANT: Angie Charlton

MAILING ADDRESS: 1801 Boulder Ave, Helena, MT 59601

CONTACT NUMBER: 406-431-5797

EMAIL ADDRESS: CCDestiny@gmail.com

PROPERTY ADDRESS: 729 9th Ave., Helena, MT 59601

LEGAL DESCRIPTION: Lot 3 in Block 606 of Hoback & Cannon Addition to the City of Helena, Lewis and Clark County, Montana, and more particularly described on Quit Claim Deed 558565, records of Lewis & Clark County, Montana.

GENERAL LOCATION: The property is generally located on the south side of 9th Ave between Beattie St and N Raleigh St. It is the third property west of N Raleigh St.

PRESENT LAND USE: Single Dwelling-Unit

ADJACENT LAND USE:

- North: Residential uses (largely single dwelling units)
- South: Residential uses (largely single dwelling units)
- East: Residential uses (largely single dwelling units)
- West: Residential uses (largely single dwelling units)

PRESENT ZONING: R-3

VARIANCE PROPOSALS:

Consideration of

A variance from Section 11-4-2 to decrease the allowable minimum side lot line setback from 6' to 4' (east) and a variance to decrease the allowable minimum setback from 6' to 3' (west) for a property with a legal description of All that portion of Lot 3 in Block 606 of Hoback & Cannon Addition to the City of Helena, Lewis and Clark County, Montana, and more particularly described on Quit Claim Deed 558565, records of Lewis & Clark County, Montana.

History of applicable permitting action:

- None applicable

ZONING EVALUATION for the property legally addressed as 729 9th Ave, Helena, MT, located in an R-3 zoning district.

ZONING REQUIREMENT	Applicable ZONING REGULATION	PRESENT CONDITION	PROPOSAL	VARIANCE REQUIRED
City Code: 11-4-2 Side Lot Line Setback (east)	6'	4'	4'	Yes
City Code: 11-4-2 Side Lot Line Setback (west)	6'	3'	3'	Yes

BOARD OF ADJUSTMENT VARIANCE CRITERIA

Section 11-5-5 of the Helena Zoning Ordinance includes certain criteria that must be reviewed as part of the variance procedure.

To approve a requested variance for a new building or portion thereof, the board of adjustment shall consider the following standards and find as follows:

1. *The variance will not create a significant risk to the public health, safety, or general welfare;*
2. *The variance will not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located; and*
3. *Strict compliance with the provisions of this title would create unnecessary hardship or practical difficulty.*

In evaluating the standards above, the board of adjustment may consider the following factors:

1. *Special conditions and circumstances that are unique to the applicant's site, including the size of the property, unusual or extreme topography, or unusual shape of the property.*
2. *The height, location, or dimensions of existing structures located on the site or in the vicinity of the site.*
3. *Whether there is a prevalence of nonconformities in the vicinity of the site that are similar to the variance requested.*
4. *The subsequent imposition of zoning restrictions creating nonconforming lots or parcels, and governmental actions beyond the applicant's control.*
5. *Whether a literal interpretation of the provisions of this Title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this Title.*

6. *The extent to which the hardship or difficulty results from the actions of the applicant.*
7. *Whether granting the variance requested will confer an unreasonable special privilege to the subject property that is not available to other properties similarly located in the same zoning district.*

PUBLIC COMMENT:

As of Tuesday, September 13, 2022, no public comment has been received for the variance.

City Attorney's Office:

It is the recommendation of the City Attorney's Office, that staff does not make a recommendation to approve or deny a variance.

CONCLUSION

Montana law states the Board of Adjustment has authority to consider "...upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done." (76-2-323 MCA)

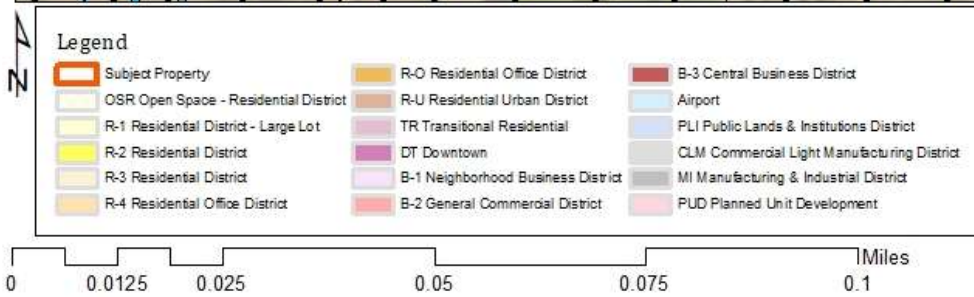
Motion:

Move to Approve or Deny

A variance from Section 11-4-2 to decrease the allowable minimum side lot line setback from 6' to 4' (east) and a variance to decrease the allowable minimum setback from 6' to 3' (west) for a property with a legal description of All that portion of Lot 3 in Block 606 of Hoback & Cannon Addition to the City of Helena, Lewis and Clark County, Montana, and more particularly described on Quit Claim Deed 558565, records of Lewis & Clark County, Montana.

If the Board of Adjustment approves the requested variance, the following condition is recommended:

Building Permit: A building permit must be obtained within one (1) year.





BOARD OF ADJUSTMENT VARIANCE APPLICATION

Community Development Department, Planning Division

316 North Park Avenue, Room 445, Helena, MT 59623

406-447-8490; citycommunitydevelopment@helenamt.gov

Date received:

APPLICATION FEE: \$125.00
(PAYABLE TO THE CITY OF HELENA)
ALL FEES ARE NON-REFUNDABLE

PROPERTY OWNER: *Primary Contact?*

Name: Randal and Marcia Warner Primary Number: _____
Address: 729 9th Ave, Helena, MT 59601 Other Phone: _____
Email: _____

APPLICANT (If different from property owner): *Primary Contact?*

Name: Angie Charlton Primary Number: (406) 431-5797
Address: 1810 Boulder Ave, Helena, MT 59601 Other Phone: _____
Email: CCDESTINY@GMAIL.COM Company: _____

AUTHORIZED REPRESENTATIVE: *Primary Contact?*

Name: _____ Primary Number: _____
Address: _____ Other Phone: _____
Email: _____ Company: _____

Section A: PLEASE PROVIDE THE INFORMATION REQUESTED BELOW.

Address of Property 729 9th Ave, Helena, MT 59601
Address City State Zip Code

Legal Description (Block & Lots, Subdivision, COS#) _____
HOBACK AND CANNON ADDN, S30, T10 N ,R03 W, BLOCK 606, E2 LT 3

Geocode 05-1888-30-4-08-23-0000

The most recent deed for impacted property

Lot or Parcel Size (square feet) 3500ft

Current and proposed use of structure or property: Demo existing house with failing foundation and build a new house

Current Zoning District R3

Are there other related Land Use Applications being submitted: Yes No

Submit proof of current paid taxes

1 copy of a scaled site plan and supporting data/documents. The site plan must clearly show the existing standard and the proposed variance to the standard. DOCUMENT A1 & A2

Section B: INDICATE WHICH VARIANCE(S) IS (ARE) BEING REQUESTED AND THE EXTENT OF THE VARIANCE.

EXAMPLE: [X] Reduce Front Lot Line Setback: *From the required 10 feet to 3 feet.*

Please provide all the information requested in the Application. An incomplete application may delay the review of your request. Please note: "N/A" is not an acceptable answer alone and requires an explanation if used.

Dimensional Criteria:

- Reduce front lot line setback: _____
- Front lot line setback #2 (corner lot): _____
- Reduce garage entrance setback: _____
- Reduce side lot line setback: REDUCE EAST SIDE SET BACK FROM 6FT TO 4FT AND REDUCE WEST SIDE SET BACK FROM 6FT TO 3.5FT _____
- Reduce rear lot line setback: _____
- Exceed building height limitation: _____

Lot Coverage/Area Criteria:

- Lot coverage percentage: _____
- Front porch lot coverage percentage: _____
- Lot area per dwelling unit: _____

Landscaping Criteria:

- Reduce or eliminate landscaping area: _____
- Reduce or eliminate screening: _____

Parking Criteria:

- Exceed the maximum parking spaces allowed: _____
- Reduce the amount of required on-site parking spaces: _____
- Reduce or eliminate loading berths: _____
- Reduce or eliminate required bicycle spaces: _____
- Reduce size of parking space: _____

Sign Criteria:

- Sign area (square footage): _____
- Sign height: _____
- Sign location: _____
- Number of signs: _____

Other: _____

Section C: BOARD OF ADJUSTMENTS VARIANCE REVIEW CRITERIA.

To approve a requested variance for a new building or portion thereof, the Board of Adjustment shall consider the following standards in section 11-5-5 of the Helena City Code and find as follows:

1. The variance will not create a significant risk to the public health, safety, or general welfare;
2. The variance will not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located; and
3. Excluding monetary hardship, strict compliance with the provisions of this title would create unnecessary hardship or practical difficulty.

These are the standards your application for variance will be judged on. Your answers in section D should speak to the review criteria.

It is the applicant's burden of proof to show that a variance should be granted. As part of your application, you are required to provide information for each of the following factors including all alternatives considered. Failure to provide adequate responses or requested documentation may result in a returned application.

Section D: EVALUATION FACTORS

- 1. **Special conditions and circumstances that are unique to the applicant's site, including the size of the property, unusual or extreme topography, or unusual shape of the property.**

If the above condition applies, state the specific factors and provide supporting documentation. For example, if the variance request is due to an abnormal lot configuration, provide a survey of the lot that specifically demonstrates the issue.

LOT IS VERY NARROW AND LONG. 140 FT LONG(NORTH TO SOUTH) 24.25FT EAST TO WEST ON NORTH END AND 25FT EAST TO WEST ON THE SOUTH END

PLEASE SEE THE INCLUDED DEED WITH THE MEASUREMENTS AND DOCUMENT A1 -SITE PLAN

- 2. **The height, location, or dimensions of existing structures located on the site or in the vicinity of the site.**

Ex: How is the proposed variance compatible with the other structures located on the site or in the vicinity of the site? On the site plan you provide, please represent accurately and to scale the height, location, and dimensions of existing structures.

The proposed variance is compatible with other houses in the vicinity because the side set backs are under 6ft

- 3. **Whether there is a prevalence of nonconformities in the vicinity of the site that are similar to the variance requested.**

If so, what are those nonconformities and provide supporting documentation.

The primary non-conformity of other existing structures in the area is that the side set backs are less than 6ft. Please see document A1 AND 729 9TH AVE MAP

- 4. **The subsequent imposition of zoning restrictions creating nonconforming lots or parcels, and governmental actions beyond the applicant's control.**

Is the need for a variance request a result of government action? For example, the front yard setbacks were increased after construction of the structure, thereby creating the non-conformity. Explain.

I honestly don't know when the zoning codes were developed but this house was built in 1920 and I would guess the zoning rules came after these houses were built.

- 5. **Whether a literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title.**

For example, would the denial of the variance deny the property owner the right to safe placement of a garage where garages are typical? If so, explain.

Yes, a denial for this variance would deny the property owner of a house on an existing narrow lot where as the existing neighbors have houses on narrow lots with minimal side setbacks

6. The extent to which the hardship or difficulty results from the actions of the applicant.

Explain the extent of the circumstances that are creating hardship or difficulty in compliance with the City Code and list alternatives and options considered by the applicant. Provide supporting documentation.

The hardship with re-building a house to city code on this lot is the narrowness of the lot. If the variance is not allowed then the house would only be able to be 13ft wide which

in my opinion makes this lot unusable. The variance will allow us to develop the lot with a new safe structure that can be enjoyed for another 100 yrs

7. Whether granting the variance requested will confer an unreasonable special privilege to the subject property that is not available to other properties similarly located in the same zoning district.

Granting this variance is not an unreasonable privilege. The existing house has been in place for 100yrs+ and we would like to stay in the same footprint.

There are other properties in this neighborhood that have less than 6ft side set backs so I don't believe it to be out of the ordinary or an unreasonable request.

Please see 729 9th ave map

8. Do you think a rebuttable presumption, as identified in City Code Section 11-5-5(E), should apply to your property, yes or no? For example, do you have an existing non-conforming structure that you wish to rebuild in the same location? If yes, show the original footprint of the building. Provide documentation that proves the existence of the prior nonconformity. Document that the nonconformity can be in compliance with building and fire codes.

YES, rebuttable presumption should apply to this property. The existing house was built in 1920. It is now failing and we would like to rebuild a new house in the same footprint that will

enhance the neighborhood and provide more housing in the City of Helena. The distance between this structure and the structure on the west is only 6ft. We will meet building

codes and fire codes by using a 1 hour fire wall when we design the new house. Please see 729 9TH AVE DEED AND Document A

9. Provide any additional information you would like the Board to consider.

My husband Chris and I are under currently under contract with this piece of property. We are filing this application to now to know if we will be able to demo the existing structure that is no longer structurally sound and rebuild a new one in it's place

We haven't designed the new house yet, not knowing if the variance would be granted .Our goal is to design a house that will enhance the neighborhood and not be an eyesore. I am including a document with pictures of some houses that I think will look great in this eclectic neighborhood

Since we are still in the purchasing phase we would like to ask for an extension on the variance / demo from a year to two years to allow for time to design this project and get everything in place

IT IS THE POLICY OF THE CITY OF HELENA'S BOARD OF ADJUSTMENT TO NOT ACT ON A PROPOSAL IF THE APPLICANT/PROPERTY OWNER OR REPRESENTATIVE IS NOT PRESENT AT THE BOARD OF ADJUSTMENTS HEARING. CITY STAFF REPRESENT THE CITY AND CANNOT ANSWER QUESTIONS ON BEHALF OF THE APPLICANT AT THE BOARD OF ADJUSTMENT HEARINGS.



558565

2-7-97

HA&TCo.

97 FEB -7 PM 4:26

HELENA ABSTRACT & TITLE COMPANY

9353

Quit Claim Deed to Joint Tenants

BY *Shirley McDade*
600

QUIT CLAIM DEED

52662 WFS

For Value Received **MARCIA WARNER** does hereby convey, release, remise and forever quit claim unto **RANDAL WARNER** and **MARCIA WARNER**, as joint tenants (and not as tenants in common), and to the survivor of said named joint tenants, and their assigns, and to the heirs and assigns of such survivor, the following described premises in Lewis and Clark County, Montana, to-wit:

All right, title and interest, together with any after-acquired title, in and to the following described real property:

All that portion of Lot 3 in Block 606 of the Hoback & Cannon Addition to the City of Helena, Lewis and Clark County, Montana, particularly described as follows:

Beginning at a point in the north boundary line of said Lot 3, which said point of beginning is 24.25 feet west of the northeast corner of said Lot 3; thence running east along the said north boundary line of said Lot 3, a distance of 24.25 feet to the said northeast corner of said Lot 3; thence running southerly along the east boundary line of said Lot 3, a distance of 140 feet to the southeast corner of said Lot 3; thence westerly along the south boundary of said Lot 3 (being the north boundary line of an alley running east and west through said Block 606) a distance of 25 feet to a point; thence running northerly along a line parallel to the east boundary line of said Lot 3, a distance of 75.7 feet to a point; thence east a distance of 2.6 feet; thence running northwesterly along a straight line to the point of beginning. (Ref: 234 Deeds 254)

TO HAVE AND TO HOLD the premises, with their appurtenances unto the said Grantees, as joint tenants with right of survivorship (and not as tenants in common) and their assigns, and to the heirs and assigns of the survivor of said named joint tenants forever.

Dated this 6 of Feb, 1997.

Marcia Warner
MARCIA WARNER

STATE OF MONTANA
COUNTY OF LEWIS AND CLARK

This instrument was acknowledged before me on Feb 6, 1997 by **MARCIA WARNER**.

David A. Cochran
Notary Public for the State of Montana
Residing at: Helena
My Commission Expires: 10-15-99



LEWIS & CLARK COUNTY

Shopping Cart: 0 items [\$0.00]

[New Search](#)

[History](#)

[Payoff](#)

[PayTaxes](#)

[Help](#)

Property Tax ID: 4163

Status: Current
Realware#: 188830408230000
Receipt: 40118

2021 Owner(s):
WARNER RANDAL & MARCIA

Mailing Address:
729 9TH AVE
HELENA, MT 596013726

Levy District:
01-01, Tax District 01

2021 Value:

Market: \$178,200
Taxable: \$2,406

[Detail](#)

2021 Taxes:

[View Pie Charts](#)

First Half: \$1,234.53 **Due:** 11/30/2021
Second Half: \$1,234.52 **Due:** 5/31/2022
Total: \$2,469.05

[Detail](#)

2021 Payments:

First Half: \$1,234.53
Second Half: \$1,234.52
Total: \$2,469.05

(May include penalty & interest)

2021 Legal Records:

Geo Code: 05-1888-30-4-08-23-0000 **Deed Book:** M18 **Page:** 9353 **Date:** 1997-02-07

Property address: 729 9TH AVE, HELENA MT 59601
Subdivision: (HBC) SubDiv HBC **Block:** 606
TRS: T10 N, R03 W, Sec. 30
Legal: HOBACK AND CANNON ADDN, S30, T10 N, R03 W, BLOCK 606, E2 LT 3

Note: The accuracy of this data is not guaranteed. Property Tax data was last updated 07/08/2022 10:00 AM.

Send Payments to:
Lewis & Clark County
316 North Park Ave; Room #113
Helena, Montana 59623

Phone: (406) 447-8329
Email: propertytax@lccountymt.gov



729 9th Ave

72'

Property Line →

Shed

← Property Line

Additions

20'

16'

Two Story 30'

Porch

18'

Neighbors House

Shed

7'

4'

Neighbors House

Porch

3.5'

2.5'