

Docket Number: 21/10765

Appellants: United Services of Des Moines
Catherine Myers
3150 SE Gateway Drive, Suite A
Grimes, IA 50111

Kenneth Kulisky (Property Owner)
4015 NE 44th Drive
Des Moines, IA 50317

Appeal: Requesting a Variance to allow an existing uncovered deck addition and deck steps to remain located approximately 21-feet from the southern, front property line.

Appeal Given: “We applied for a general permit and thought we received one to complete the fire restoration at the subject address. When we called to follow up on the permit, the staff in the field worked with the inspector to receive approval on the size and placement of the post holes. We proceeded to complete the deck then called for final inspection to find out that the ‘separate permit’ exclusively for the deck had not been pulled. Therefore, we submitted the permit app and fee. Once we submitted the plan, we were told that there are setbacks that the new deck plan does not comply with. However, it is the exact same size and in the exact same location of the previous deck that was never a problem before. Also, there is a street, vs. a neighbor directly to the south, so the deck does not encroach on any lot lines that would interfere with a neighbor and there is a drive way out to the street on that same side”.

Background

The subject property is located at 4015 NE 44th Drive, Des Moines, and is legally described as Lot 50 in Capitol Heights No 2 of Section 21, Township 79 North, Range 23 West of the 5th P.M. (Delaware Township). The subject property is 34,823 square feet in size and is zoned “LDR” Low Density Residential District. The property is configured as a corner lot with 148.5-feet of frontage onto NE 44th Drive to the west and 234.5 feet of frontage onto NE 40th Avenue to the south, with driveway access taken from NE 40th Avenue. Surrounding properties to the north, east, south, and west are all zoned “LDR” Low Density Residential District and developed with single-family homes. The subject property contains an existing single-family dwelling and 10-foot by 12-foot (120 square feet) accessory building. The dwelling was constructed in 1983, and a permit was recently issued for fire restoration of the structure. See *Attachment ‘A’* at the end of this report for an aerial vicinity map showing the location of the property.

Staff mailed out 23 notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 250-foot notification boundary. To-date staff have received one (1) response in support and no responses in opposition of this Appeal.

Summary of Request

The Polk County Zoning Ordinance, *Article 6: Bulk and Use Standards, Division 6: Exceptions to Dimensional Requirements, Section 2: Encroachments and Projections in the Required Setback* states in part that, “Except as otherwise provided, the following encroachments are permitted in the required setbacks provided there is no obstruction of any sight distance and (G) uncovered porches may encroach five (5) feet or less into the front setback”. The Variance is requested to

allow an existing 10' x 13'-6" uncovered deck with 3'-6" x 3'-6" deck steps attached to the principal dwelling to remain at a front yard setback of approximately 21-feet, as measured from the southern, front property line adjacent to NE 40th Avenue. The "LDR" Low Density Residential District requires a minimum front yard setback of 35 feet for a principal dwelling, with the exception noted above allowing an uncovered deck to encroach an additional five (5) feet into the front setback, or what would be a front setback of no less than 30-feet in this instance. The deck and steps in question are existing, and were recently reconstructed in the same location as a previous deck which was destroyed by a fire. The Appellant's site plan is included at the end of this report as *Attachment 'B'*.

Natural Resources

The subject property does not have significant natural resources, there are no environmental hazards and the property does not contain any designated floodplain. The property has a few scattered woodlands located along the shared eastern property line and a few scattered within the southern front yard. The topography of the site is relatively flat with a high elevation at the southeast corner of 954 feet and a low elevation of 948 feet along the southwest corner of the property.

Roads & Utilities

The subject property has a primary access onto NE 40th Avenue. The property is a corner lot with 148.5-feet of frontage to the west onto NE 44th Drive and 234.5-feet of frontage onto NE 40th Avenue to the south. NE 44th Drive and NE 40th Avenue are paved, two-lane local roadways maintained by Polk County. Water service is provided by Des Moines Water Works. Wastewater treatment is provided by an onsite septic system located north of the dwelling. County records and the appellant's site plan indicate that the deck and deck steps will meet the required separation distance of 10 feet from any portion of the septic system.

Recommendation

Request for a Variance to allow an uncovered deck addition and deck steps to meet an approximately 21-foot setback from the southern front property line

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?
 - Yes. The existing home is located on a corner lot configuration which creates two front yards with setbacks along both frontages that limits buildable area of the property. The uncovered deck was constructed within the same footprint as the previous, existing deck that was damaged by fire. The subject property and surrounding properties were platted in 1939 with several homes throughout the neighborhood meeting a setback that is less than the current standard.

- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)

Yes. An uncovered deck is permitted within the zoning district.

- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?

Yes. The impact, if any, on surrounding properties will be minimal. The deck replaced a previous deck that had been destroyed by fire. The deck will not create any sight distance issues and at the proposed setback will not be perceived as being setback an abnormal distance compared to other homes within the vicinity of the subject property.

- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?

Yes. The corner lot configuration and location of the existing septic system limit the buildable area and did not result from the actions of the Appellant.

- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?

Yes. The granting of the requested Variance supports the intent of these provisions.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance to allow the uncovered deck and deck steps to meet an approximate setback of 21-feet from the southern, front property line.

4115
Attachment 'A'



NE 43RD CT

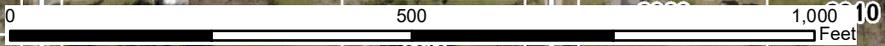
NE 44TH DR

NE 45TH DR

NE 46TH ST

4015 NE 44th Drive

NE 40TH AVE



1" = 40'

Attachment 'B'

4035

4040

X

4015

~130'

4490

~76'

approx. 35'

approx. 25'

NE 44TH DR

NE 40TH AVE

3979

3980

