

**Appeal:** The appellants request a front yard setback variance to allow a new residential accessory building to be located in front of the principal dwelling at a front yard setback of approximately two (2) feet.

**Background**

The subject property is located at 144 NW 72<sup>nd</sup> Place, Ankeny, and is legally described as part of Lot 5 of Packard Acres, within Section 35 of Township 80 North, Range 24 West of the 5<sup>th</sup> P.M. (Crocker Township). The property is approximately 1.74 acres in size and is zoned “LDR” Low Density Residential District. The subject property is located at the southeast corner of NW 2<sup>nd</sup> Street (Hwy 415) / NW Packard Way and NW 72<sup>nd</sup> Place. The City of Ankeny corporate limits are located directly north of the subject property lying north of NW 72<sup>nd</sup> Place. Ankeny’s corporate limits also extend south to NE 70<sup>th</sup> Avenue just east of the subject property lying east of NE 2<sup>nd</sup> Street. The surrounding unincorporated area is zoned “LDR” Low Density Residential District and primarily developed with single-family homes. See *Attachment A* at the end of this report for a vicinity map of the subject property and surrounding area.

According to County records, the single-family dwelling on the property was constructed in 1957. Accessory structures include a 30’ x 48’ (1,440 square feet) detached garage located southwest of the house that was constructed in 1993, as well as a 26’ x 48’ (1,248 square feet) detached garage located southeast of the house and constructed in 2011 to replace a previous garage in the same location. The subject property also contains an in ground swimming pool, which was permitted and constructed by the previous property owner in 1986. The previous property owner was also granted a series of setback variances in 1982 for a small pigeon house located west of the dwelling. The pigeon house has since been demolished. A fire recently damaged the 30’ x 48’ (1,440 square feet) detached garage located southwest of the house. The appellants have since obtained a demolition permit and razed the structure. Staff has been working with the appellants and their surveyor over the last several months on their plans to construct a new pole building to replace this garage. Through our review it has been determined there is a large remnant piece of public road right-of-way located in the northwest corner of the subject property that effectively changes what was previously understood as the front property line, and impacts the proposed building location.

This remnant right-of-way is leftover from the 1960’s when this public roadway, now NW 72<sup>nd</sup> Place, curved further south along the subject property before intersecting with NW 2<sup>nd</sup> Street (Hwy 415). See *Attachment B* at the end of this report for a copy of the submitted site plan for this variance. The triangular shaped area labeled “State of Iowa Condemnation Bk 3521 Pg 273” located in the northwest portion of the property represents the remnant public right-of-way. The appellant’s surveyor has been working with the Iowa DOT and the Polk County Auditor’s Office to come to a solution. It is not yet clear whether this is Iowa DOT or Polk County right-of-way. Once determined the owners would have the option to go through a vacation or title transfer process with either the State or Polk County to regain title/use of all or a portion of this ground. However, the Ordinance requires that this existing right-of-way line be observed as the effective northern, front property line at this time, and therefore a variance is required for the proposed

new building. *Attachment B* shows the new proposed building located in front of the existing dwelling relative to the northern, front property line and at an approximate setback of two (2) feet from that front property line.

### **Summary of Request**

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 6 Accessory Regulations, Section 1(J)* stipulates that an accessory building may not be placed in front of the principal building unless said accessory building is setback a minimum of 100 feet from front property lines; and has a maximum separation distance between the principal structure and accessory building of 150 feet. The property owner is proposing to construct a new 2,925 square feet (45' x 65') accessory building in front of the principal dwelling at a front yard setback of approximately two (2) feet from the northern, front property line. The first provision is not satisfied as the accessory building must be even with or further setback than the existing dwelling, with a minimum front yard setback for the underlying zoning district of 35 feet, or a minimum of 100 feet setback if placed in front of the principal dwelling. The second provision is satisfied as the proposed building location is approximately 75 feet from the existing dwelling. The proposed building meets the minimum 35 feet of front yard setback required from the secondary front property line to the west.

Staff mailed out 24 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 has received three (3) responses in support and zero (0) responses in opposition of this Appeal.

### **Natural Resources**

The subject property contains no areas of mapped floodplain, wetlands or other environmental hazards or features. The northern half of the property contains relatively flat topography between 896 and 900 feet, but the southern half of the property contains sloping topography along a wooded ravine, including a low elevation of 888 feet. The wooded ravine includes a number of existing mature trees. The proposed building location will not impact the ravine or existing trees.

### **Roads & Utilities**

The property has over 300 feet of frontage to the north onto NW 72<sup>nd</sup> Place. The property also has frontage to the west along NW Packard Way and NW 2<sup>nd</sup> Street (Hwy 415). The subject property has two (2) existing driveway entrances to the north onto NW 72<sup>nd</sup> Place. NW 72<sup>nd</sup> Place is a two-lane paved roadway that largely follows the jurisdictional boundary between the City of Ankeny to the north and unincorporated Polk County to the south. It connects west to NW 2<sup>nd</sup> Street (Hwy 415), and connects east to NE 2<sup>nd</sup> Street and NE 70<sup>th</sup> Avenue, eventually intersecting with NE 14<sup>th</sup> Street (Hwy 69). The subject property is served by a private onsite septic system, which County records indicate is located directly north of the house. The appellants are required to show the septic system location on an updated site plan prior to building permit application. A minimum of ten (10) feet of separation is required between the proposed new building and any portion of the septic system. Water service is provided by Des Moines Water Works. *Attachment B* shows the approximate location of the existing water main within the remnant right-of-way area. There are also existing telecommunication utilities located within this same right-of-way area.

## **Recommendation**

**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 discovery of a remnant segment of public road right-of-way effectively results in a sizable loss of property area within the northwest corner of the subject property. The proposed building location would meet setback requirements and not require a variance absent this remnant right-of-way segment. Furthermore, a wooded ravine effectively prevents the accessory building from being located further south in any attempt to more fully comply with the setback requirement from the northern, front property line.
- 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. Residential accessory structure are permitted within the “LDR” Low Density Residential District.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?  
Yes. Surrounding unincorporated properties contain similar accessory structures. Furthermore, the County permitted a previous detached garage in this same location in 1993 with apparently no understanding or consideration of the remnant right-of-way piece in question. This previous structure was recently destroyed by fire, and this variance will allow a similar replacement building in approximately the same location.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?  
Yes. The remnant road right-of-way and site topography challenges did not result from actions of the appellants. Both are existing constraints that effectively prevent the reconstruction of a previously allowed accessory building, but for the granting of a variance.
- 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 appellant is required to meet the environmental provisions of the Polk County Zoning Ordinance. No environmentally sensitive areas of the property are impacted by this proposal.

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 with the following conditions:

1. The applicant shall obtain approval of a building permit within 60 days of approval of this Variance. The site plan for the building permit application shall show the location of the property's septic system, and clearly demonstrate that all portions of the system will be a minimum of ten (10) feet from any part of the new building.
2. This Variance shall only apply to the proposed approximately 45' x 65' (2,925 square feet) accessory building and its setback from the edge of the existing northern front property line, as represented by the edge of the remnant right-of-way in question. This Variance does not apply to any future location of the northern front property line that may be established through a future road easement vacation or right-of-way deed transfer process by either the appellants or a future property owner.



