



## Board of Zoning Appeals

### Meeting Minutes

July 22, 2019

7:00 p.m.

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W. Main Street and was called to order by Board of Zoning Appeals Chair, Mr. Gallagher, at 7:00 p.m.

Those answering roll call:

Mr. Everett Gallagher	Present
Mr. Kirk Smith	Absent
Ms. Andrea Wiltrout	Present
Ms. Kerri Mollard	Present
Mr. Shaun LaJeunesse	Present
Ms. Marlene Brisk (council liaison)	Present

Staff members present: Steven Mayer, Development Services Manager; Chris Christian, Planner; and Josie Taylor, Clerk.

Mr. Gallagher stated he had several corrections to the minutes for the June 24, 2019 meeting. Mr. Gallagher stated on page three (3) the word "funs" should be "runs;" on page eighteen (18) the word "lifestyles" should be capitalized to "Lifestyles" as it was in reference to the Lifestyle Communities apartment complex; and on page seventeen (17), at the bottom, the word "drops" should be changed to "increases." Mr. Gallagher noted he had discussed with Ms. Taylor that Mr. Perotti, the attorney for Verizon, at the very end, was complimentary of the forum and the discussion, and he thought that should go into the record.

Mr. Gallagher asked if anyone had any others.

Ms. Taylor stated she had all of those and would be making them.

Ms. Mollard stated she noticed that on page thirteen (13) there was a period where it should be a comma in the fourth paragraph, "Mr. Joe Golian," third line down, "until this evening. and where it was going to be located" should be changed to "until this evening, and where it was going to be located."

Moved by Ms. Wiltrout to approve the June 24, 2019 meeting minutes, as corrected; seconded by Mr. LaJeunesse. Upon roll call: Ms. Wiltrout, yea; Mr. LaJeunesse, yea; Mr. Gallagher, yea; Ms. Mollard, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote .

Mr. Gallagher asked for any corrections or additions to the agenda.

Mr. Christian stated none from staff.

Mr. Gallagher swore to truth those wishing to speak before the Board of Zoning Appeals (hereafter, "BZA").

**V-48-2019 Variance**

**Variance request to C.O. 1179.06(3)(A) to allow a cell tower to be located 40 feet from a single family residential lot where city code requires a minimum 200 foot setback (PID: 222-001516-00).**

**Applicant: UAS Inc, c/o Rob Ferguson**

Mr. Mayer explained that the prior week the Planning Commission had reviewed, but ultimately tabled, the conditional use application. Mr. Mayer stated they had received additional testimony and a few additional documents, such as cases they had provided in their packets tonight. Mr. Mayer stated staff and city were going to hire a consultant to review all the previously submitted documents and testimony and present that to the Planning Commission in August. Mr. Mayer said since they were reviewing that additional material and since the variance could be heard until action was taken on the conditional use, staff recommended the variance be tabled for one (1) month.

Ms. Wiltrout stated she agreed with that approach. Ms. Wiltrout stated as a member of the Planning Commission, there was a lot of information, and there was a lot of feedback from the audience, and there was a lot to digest here. Mr. Wiltrout said she was glad they were taking a deeper look into this.

Mr. Gallagher stated he knew one of the requests was to talk about the reason why the 200 foot standard for towers was there and so forth. Mr. Gallagher stated he knew they had some discussion and asked if that was something Mr. Mayer wanted to share more detail about tonight or if he wanted to wait to the next meeting.

Mr. Mayer stated if it was alright with the Chairman, they could add that to their staff report for the next meeting and put that into the record.

Mr. Gallagher stated they should go ahead and do that then. Mr. Gallagher said he knew they had requested that the Verizon folks provide a timeline from 2008. Mr. Gallagher asked if they had received anything or should they reach out to them, what was the protocol for doing that.

Mr. Mayer stated they had received a history lesson, so to speak, from the applicant just during their testimony during the Planning Commission meeting. Mr. Mayer stated once they got those minutes completed they could share those with this board. Mr. Mayer stated they had not received anything additional in writing, beside some additional flood plain information from the FEMA maps and the four case studies they had sent along to the Board of Zoning Appeals (hereafter, "BZA").

Ms. Wiltrout stated, just to clarify, they had gotten a timeline on their search. Ms. Wiltrout stated she thought they had asked for a timeline of need and members' increase, sort of a timeline of the strain on the tower, and she had not seen that yet. Ms. Wiltrout stated she did not think that had been provided, it would not show up in the minutes.

Mr. Mayer stated no, it had not.

Mr. Gallagher asked if that was something they should ask them to do.

Mr. Mayer stated if he wanted to put that into the record tonight they could pass that along to the applicant, certainly.

Mr. Gallagher asked if that was something they needed to vote on to do or something they could request.

Mr. Mayer stated he thought it was just something they could request.

Mr. Gallagher stated that was a request then. Mr. Gallagher stated he thought they should also ask the attorney for the homeowners if they were going to provide a type of economic analysis, like a real estate comp, in terms of the economic impact on the homes. Mr. Gallagher stated he knew they had heard the testimony from several of the folks, including the Timmons' realtor, so it might be good if they could actually have something in writing with numbers and so forth. Mr. Gallagher stated that would be a request they would like to make as well.

Mr. Mayer stated certainly.

Ms. Wiltrout stated that was a great idea. Ms. Wiltrout stated that on the Timmons' property she would really like to get a better understanding of how developed they were with that lot within the lot at this point.

Mr. Mayer stated they could pass that along.

Ms. Mollard stated she was not at the last meeting, but in reading the materials there were four bullet points on the cell tower variance and the staff note was that flood plain information and case law were received but the other two were not. Ms. Mollard said she thought Mr. Gallagher had just asked about the dropped call data over time, but that third bullet may also be related to the real estate assessment, if that information had been received. Ms. Mollard said it looked like the report, the way she read it, it looked like two (2) of the four (4) bullets were provided and she wanted to make sure all four (4) were.

Ms. Wiltrout stated they had not, and she would let Mr. Banchevsky speak to this, but she thought that the 'are they in New Albany, are they not in New Albany,' distinction was something that was outside of the purview of what the FCC had requested of them to look at when looking at these applications. Ms. Wiltrout stated she did not know if that same criteria fit with the Duncan factors for the variance request, so they would be mindful of that as they worked forward with this. Ms. Wiltrout stated something they had fleshed out a little bit at the Planning Commission meeting was that there had been a statement made where a lot of the service that New Albany residents got was from a tower in Gahanna. Ms. Wiltrout stated what was good for the goose was good for the gander. Ms. Wiltrout stated they had not given any information on that, in fact, they said that data was proprietary and it would not be handed over.

Moved by Ms. Wiltrout to table consideration of V-48-2019 until the Planning Commission has made the decision on the conditional use permit, seconded by Mr. Lajeunesse. Upon roll call vote: Ms. Wiltrout, yea; Mr. Lajeunesse, yea; Ms. Mollard, yea; Mr. Gallagher, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

#### **V-61-2019 Variance**

**Variance to C.O. 1131.05(d) to allow an attached garage to encroach the required 20 foot side yard setback by 3 feet at 6248 Kitzmiller Road. (PID: 222-002188).**

**Applicant: David Olmstead**

Mr. Christian presented the staff report.

Moved by Ms. Mollard to accept the staff report and related documents into the record, seconded by Mr. Mr. LaJeunesse. Upon roll call vote: Ms. Mollard, yea; Mr. LaJeunesse, yea; Mr. Gallagher, yea; Ms. Wiltrout, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Mr. LaJeunesse asked Mr. Olmstead if he had talked to his neighbors to the north.

Mr. Olmstead stated yes, he had stopped over and talked to her before he even started. Mr. Olmstead stated he and Caroline had lived next door to each other for almost 25 years now and had moved in within like three (3) days of each other. Mr. Olmstead stated he had told her what he was doing and as he moved further along and got the final placement that he wanted he had stopped over again and told her what it was. Mr. Olmstead said she said she did not care and he had given her Mr. Christian's email address and asked if she could send an email saying that she did not mind and she said she would.

Mr Christian stated she had not yet.

Mr. LaJeunesse stated so she's on board.

Mr. Olmstead stated yes, she does not care. Mr. Olmstead thanked staff for working with him as he tried to figure out a placement for this. Mr. Olmstead said he had tried to stay out of the setback but his house kind of sits sideways, rotated a little bit, on the lot. Mr. Olmstead stated he was trying to minimize taking down trees, he had an existing well head that he must stay ten (10) feet away from, so if he were to move the garage back further on the lot he could not because of the well head. Mr. Olmstead said there was also a window for a bedroom he had to stay away from. Mr. Olmstead stated the house to the south of him was R2 and had a ten (10) foot setback and built a detached garage in line with the house about seven (7) years ago so they were kind of eclectic out there.

Ms. Wiltrout stated that as a former resident of Minneapolis she applauded his decision to build an attached garage.

Mr. Olmstead stated he had tried side load, but the reason he needed the variance was that it was so close in that corner he could not fit to get in and out of.

Ms. Wiltrout stated you could see from the map that this was where it makes sense to be. Ms. Wiltrout stated her one question was if he had any plans to remove the shrubbery.

Mr. Olmstead stated no. Mr. Olmstead said the shrubs, and the tree actually splits the lot line, and the hedge they did not know where it ran, so they were pretty laissez-faire.

Ms. Mollard asked if the home did not currently have a garage.

Mr. Olmstead stated it had an attached one-and-a-half car garage that sat in the corner. Mr. Olmstead asked Mr. Christian to load a specific image on the presentation. Mr. Olmstead stated the garage was at the northwest corner. Mr. Olmstead said he was building a two (2) car garage but had not decided what to do with the existing space. Mr. Olmstead stated he did not know if it was going to be a workshop or that probably, over time, he would turn it into additional living space.

Ms. Mollard stated this would cut off the entrance to the current garage.

Mr. Olmstead stated eventually. Mr. Olmstead stated there was an existing garage door that he would take out at some point, once he figured out what he was going to do with it.

Ms. Mollard stated in the photo there was a gardening shed and asked if the gardening shed would remain or would it come down when this was built.

Mr. Olmstead stated that shed, at some point, was coming out because it was going to be in the way of getting access to the back of the garage or the well head.

Mr. LaJeunesse asked where the shed was on a picture.

Mr. Olmstead stated it was in the corner, over and back just a little bit.

Mr. Gallagher stated he had a question for staff. Mr. Gallagher asked when they sent out notices, and they sent them to businesses, did they put a name on the business. Mr. Gallagher stated the city had requested companies to provide names of where mailings should go to, so he was just curious. Mr. Gallagher stated the reason for his question was his employer was certainly one of the businesses and normally he got them because people thought it was tax and they sent them to him just given what he did. Mr. Gallagher stated he tried to find this notice at the company and he had yet to locate it, so he was trying to figure out where this went, if there was a better process for the future.

Mr. Mayer stated the code required them to send it to the owner's address on the Franklin County Auditor's website or any auditor's website. Mr. Mayer stated that was what they used to know what the owner's information and mailing address were. Mr. Mayer stated for corporations it was certainly a little harder and sometimes, even if it was a local corporation but was part of a national chain, they sometimes had to mail them out of state as well because the code required it go to the owner information.

Mr. Gallagher stated maybe there was a recommendation for when they update the code or something, that, since the city did request names of people for other purposes, that they send it to the names of people so it helped expedite mailing.

Ms. Wiltrout stated a registered agent.

Mr. Gallagher stated that was effectively what Jennifer Chrysler did when she asked for them to provide it, just a comment.

Mr. Olmstead stated his lot was an acre and two-thirds (2/3), 450 feet deep, and A&F was on the other side of the creek from him, and they could not see each other until the fall again, but he sent everyone a note in case anyone had any questions to call him.

Mr. Olmstead stated he requested three (3) feet because the back wall was actually going to be eight (8) inches narrower, but three feet would get not only the foundation, but the wall, the open overhang, the gutters, all that stuff in there.

Moved by Mr. LaJeunesse to approve application V-61-2019, seconded by Ms. Wiltrout. Upon roll call vote: Mr. LaJeunesse, yea; Ms. Wiltrout, yea; Mr. Gallagher, yea; Ms. Mollard, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Meeting adjourned at 7:22 pm.

Submitted by Josie Taylor.

## APPENDIX



### Board of Zoning Appeals Staff Report July 22, 2019 Meeting

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#### CELL TOWER VARIANCE

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LOCATION: 5089 Johnstown Road (PID: 222-001516-00).  
APPLICANT: UAS Inc. c/o Rob Ferguson  
REQUEST: Variance to C.O. 1179.06(3)(A) to allow a cell tower to be located 40 feet from a single family residential lot where city code requires a minimum 200 foot setback.  
ZONING: R-2  
STRATEGIC PLAN: Neighborhood Residential  
APPLICATION: V-48-2019

Review based on: Application materials received May 17, 2019

*Staff report prepared by Chris Christian, Planner*

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#### I. REQUEST AND BACKGROUND

This application was last heard by the Board of Zoning Appeals on June 24, 2019 and was tabled until the next regularly scheduled meeting because their conditional use application was tabled by the Planning Commission on June 17<sup>th</sup>. At the June 24, 2019 meeting, the board indicated that they would like the applicant to provide the following information for the board to review:

- Floodplain data demonstrating that there is no suitable land at Thompson Park to locate the cell tower.
- Dropped call data over time rather than one month.
- How many New Albany homes are within the target coverage area of the proposed tower.
- Case law precedent concerning cellular towers.

The applicant has provided the floodplain information and the case law to staff which is included in your packets for review.

The applicant requests a variance from Codified Ordinance Section 1179.06(3)(A) to allow a cell tower to be located 40 feet from a single family residential lot to the west and 80 feet from a single family lot to the north where city code requires a minimum 200 foot setback.

The applicant proposes to install a 130 foot tall cell tower with a 10 foot lightning rod attached, totaling 140 feet in height. The cell tower is proposed to be located at the rear of the Temple Beth Shalom property located at 5089 Johnstown Road. The tower is being

installed in order to fill a service gap. The cell tower will be located 250+ feet away from the Temple Beth Shalom, 600+ feet from the Oxford subdivision and 500+ feet from the nearest single family home. The cell tower is proposed to be located 40 feet from an adjacent single family residential property line.

The property has a residential zoning classification, but contains a religious use. Cell towers are permitted on residentially zoned properties that contain religious uses as a conditional use. The Planning Commission tabled the conditional use application on June 17, 2019 and is scheduled to hear the application again on July 15<sup>th</sup>.

## **II. SITE DESCRIPTION & USE**

The site is located on the west side of Johnstown Road, south of Thompson Road. There is an institutional use on the property, the Temple Beth Shalom. The property is adjacent to another institutional use as well as single family residential to the west and the Oxford subdivision to the south.

## **III. ASSESMENT**

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The property owners within 200 feet of the property in question have been notified.

### ***Criteria***

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the “practical difficulties” standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

1. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
2. *Whether the variance is substantial.*
3. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
4. *Whether the variance would adversely affect the delivery of government services.*
5. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
6. *Whether the problem can be solved by some manner other than the granting of a variance.*
7. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

8. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*

10. *That the special conditions and circumstances do not result from the action of the applicant.*
11. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
12. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

### **III.EVALUATION**

#### **Variance to C.O. 1179.06(3)(A) to allow a cell tower to be located 40 feet from a single family residential lot where city code requires a minimum 200 foot setback**

The following should be considered in the Board's decision:

1. The city's Codified Ordinance Section 1179.06(3)(A) requires cell towers to be setback 200 feet from single family residential lots. The applicant is proposing locate a cell tower on the Temple Beth Shalom property, 40 feet away from a single family residential property to the west and 80 feet from a single family lot to the north, therefore the applicant is requesting a variance.
2. The applicant proposes to install a 130 foot tall cell tower with a 10 foot tall lightning rod, totaling 140 feet in height on the Temple Beth Shalom property located at 5089 Johnstown Road. The tower will be set back 250+ feet from the Temple Beth Shalom and 370+ feet from Johnstown Road.
3. This property is adjacent to the edge of the community, where the general vicinity is mostly rural in nature with larger, single family residential lots.
4. The tower will be located in the rear of the Temple Beth Shalom property within a 50'x31'x7' fenced area with ground equipment.
5. The "spirit and intent" of the zoning requirement is preserved since even though the tower is proposed to be installed 40 feet away from a residential property line, the tower will be 500+ away from the nearest single family home. This is due to the rural character of area and large single family residential lots. Additionally, there are existing tree stands and other landscaping that will serve to limit the visibility of the tower at ground level. Due to this existing character, greater separation between these uses is achieved.
6. At the previous meeting a question was raised if this tower was in the 100 year floodplain. The city engineer reviewed the application and the surrounding area and identified a stream that is a tributary to Rocky Fork Creek that is an unstudied tributary. Please provide floodplain information for the current site to ensure that the cell tower is not being developed within the 100 year floodplain. According to C.O. 1155.04(a)(2) no residential, industrial, and/or commercial development can be developed within the 100 year floodplain. C.O. 1155.04 states that in all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic analysis is completed that generates base flood elevations for all development proposals. Additionally, there is a 20 foot setback requirement from the 100 year floodplain.
  - The applicant has not submitted any documentation showing the current location is not within or a minimum of 20 feet away from the 100 year floodplain.
7. The applicant has submitted documentation showing the number of 4G dropped calls during April 2019 in the area surrounding this site. The applicant states that this tower will reduce the number of dropped connections within the documented outlined area. The applicant states the proposed tower location will also provide

capacity relief to the adjacent site to the south. The Planning Commission is reviewing this as part of the conditional use application.

8. The variance request does not appear to be substantial. The existing tree stands and additional landscaping will provide screening for the cell tower from adjacent residential properties. The tower will still be setback 500+ feet away from the nearest residential home. Due to the large setbacks, the tower will fit into the existing tree line and its visibility at the ground level will be limited.
9. It does not appear that granting the variance will substantially alter the essential character of the neighborhood, nor will adjacent properties suffer a substantial detriment. The existing tree stands and additional landscaping will provide screening for adjacent residential properties.
10. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
11. Granting the variance would not adversely affect the delivery of government services.

#### **IV. RECOMMENDATION**

Staff recommends approval of the variance request should the Board of Zoning Appeals find the application has sufficient basis of approval. Given the low density and large setbacks, it appears the tower's location will minimize its impact to residents in the general area.

The spirit and intent of the code requirement is to maintain separation between uses. While the tower is located 40 feet away from a residential property line, the closest single family home is greater than 500 feet away from the tower. The tower's location maximizes setbacks from all buildings in the area and utilizes existing landscaping to provide screening for the structure which will allow the tower to appear to be part of the existing tree line. Additionally, the existing tree stands and other landscaping will serve to limit the visibility of the tower at ground level.

#### **V. ACTION**

The Board shall approve, approve with supplementary conditions, or disapprove the application as presented. If the application is approved with supplementary conditions, the Board of Zoning Appeals shall direct staff to issue a zoning permit listing the specific conditions listed by the Board of Zoning Appeals for approval.

Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motion would be appropriate:

#### **Move to approve application V-48-2019 with the following conditions:**

- 1) The conditional use application is approved by the Planning Commission.

**Approximate Site Location:**



Source: Google Maps



**Board of Zoning Appeals Staff Report  
July 22, 2019 Meeting**

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**6248 KITZMILLER ROAD  
SIDE YARD SETBACK VARIANCE**

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LOCATION: 6248 Kitzmiller Road (PID: 222-002188-00)  
APPLICANT: David Olmstead  
REQUEST: Variance to C.O. 1131.05(d) to allow an attached garage to encroach the required 20 foot side yard setback by 3 feet.  
ZONING: Agricultural (AG)  
STRATEGIC PLAN: Rural Residential  
APPLICATION: V-61-2019

Review based on: Application materials received on June 18, 2019

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*Staff report prepared by Chris Christian, Planner.*

**I. REQUEST AND BACKGROUND**

The applicant requests a variance to C.O. 1131.05(d) to allow an attached garage to encroach the required 20 foot side yard setback by 3 feet.

The applicant is proposing to construct an attached garage addition to their existing home at 6248 Kitzmiller Road. City code section 1131.05(d) requires a minimum 20 foot side yard building setback for this zoning district. As proposed, one of rear corners, approximately 1.2% of the garage addition's area, will encroach the required side yard setback by 3 feet.

**II. SITE DESCRIPTION & USE**

The site has a single family home, constructed in 1988 according to the Franklin County Auditor, and is zoned Agricultural (AG). The lot is 1.67 acres and the neighboring properties consist single-family homes to the north and south, and commercially zoned land to the east. The surrounding residential lots are zoned R-1, R-2 and Agricultural.

**III. EVALUATION**

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The Property owners within 200 feet of the property in question have been notified.

***Criteria***

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the "practical difficulties"

standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

13. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
14. *Whether the variance is substantial.*
15. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
16. *Whether the variance would adversely affect the delivery of government services.*
17. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
18. *Whether the problem can be solved by some manner other than the granting of a variance.*
19. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

20. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
21. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
22. *That the special conditions and circumstances do not result from the action of the applicant.*
23. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
24. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

### **III. RECOMMENDATION**

#### ***Considerations and Basis for Decision***

#### **Variance to C.O. 1131.05(d) to allow an attached garage to encroach the required 20 foot side yard setback by 3 feet.**

The following should be considered in the Board’s decision:

1. The applicant is proposing to build an attached garage at their home. The proposed garage is 26’x26’. Since this is a home addition it must follow the building setback requirements for the single family residential structure.
2. Due the shape of the lot, one rear corner of the proposed garage is setback 17 feet from the side property line where city code requires a 20 foot side yard setback for lots in an agricultural zoning district.
3. It does not appear that the essential character of the neighborhood would be altered or adjoining properties would suffer a substantial detriment. The zoning for surrounding residential lots is a mix between R-1, R-2 and Agricultural. There are lots in the immediate area, including the residential lot to the south, that are zoned R-2 which only have 10 foot side yard setbacks. The applicant has designed the garage to have a minimal impact on the adjacent property to the north.
4. The request does not appear to be substantial as the garage will still be setback seventeen feet from the side property line. Additionally, the request does not appear to be substantial as only a small portion of the garage, approximately 1.2%, will

- encroach the required side yard setback.
5. There is an existing hedge that runs along the side of the property and is approximately 10 feet tall which will provide some screening for the portion of the garage that is encroaching into the required side yard setback. The applicant could locate the garage out of the setback, however the applicant is positioning the garage so it is partially screened by this existing landscaping. Moving the garage forward will project it further in front of the existing home which will make it more visible by the neighboring property owner.
  6. It appears that granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.
  7. It appears granting the variance will not adversely affect the delivery of government services.

Staff recommends approval of the variance request should the Board of Zoning Appeals find that the application has sufficient basis for approval. The variance does not appear to be substantial given the minimal setback encroachment of 3 feet and that only a small portion of its footprint, 1.2%, of the garage will encroach into the required side yard setback. Additionally, the immediate area surrounding this property includes R-1, R-2 and agriculturally zoned lots. R-2 lots are permitted to install a structure 10 feet away from a side property line. Due to this, it does not appear that granting this variance request will alter the character of the neighborhood nor would neighboring properties suffer a substantial detriment.

#### **V. ACTION**

Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motions would be appropriate (conditions of approval may be added):

**Move to approve application V-61-2019 based on the findings in the staff report.**

**Approximate Site Location:**



Source: Google Earth