

DATE: April 29, 2011
TO: Board of Adjustment
FROM: Nicole Jones, Planner
Community Development Department
FILE NO.: VAR20110001
PROPOSAL: A Variance request to reduce the side yard setback from 10' to 5' for the construction of a boat garage.

GENERAL INFORMATION

Applicant: Iris Beach
Property Owner: Iris Beach
Property Address: 4113 Blackerby Street
Legal Description: Twin Lake Lot 4A
Parcel Code Number: 7-B10-0-106-004-0
Site Size: 12,296 sq ft
Zoning: D-5
Utilities: Public water and public sewer
Access: Blackerby Street
Existing Land Use: D5 Single family residential
Surrounding Land Use: North - D5 Single family residential
South - Blackerby Right-of-way
East - D5 Single family residential
West - D5 Single family residential

ATTACHMENTS

Attachment A	Waiver to plat for the zero lot line subdivision
Attachment B	Photos of property taken on April 4, 2011
Attachment C	E-mail comments received from adjacent neighbor

PROJECT DESCRIPTION

The applicant requests a variance to reduce the side yard setback from 10 feet to 5 feet to construct a 640 square foot boat garage.

BACKGROUND

This property is zoned D5 that normally would have minimum side yard setbacks of 5 feet. However, this property is part of a common wall subdivision (see attachment A) which has unique side yard setbacks in D5 zones. Per CBJ §49.25.400 Table of Dimensional Standards note six a 10 foot side yard setback applies to this property because of the common wall subdivision:

CBJ §49.25.400 Table of Dimensional Standards note 6

*Zero-foot setback for the portion of the dwelling with a common wall, five-foot setback or five-foot wide easement for the portion of the dwelling at the common lot line without a common wall, and **ten-foot setback for the remaining side yards of the lot.***

According to the CBJ Assessor's Database the common wall dwelling was built in 1982. In 2004 a building permit was issued for an accessory building with plumbing and electricity.

ANALYSIS

In a D5 zoning district side yard setbacks are 5 feet, except in the case of common wall subdivisions. If this lot was not a common wall subdivision lot the side yard setbacks would be 5 feet. Additionally, garages are allowed to be 5 feet from any property line providing that they meet the requirements of CBJ §49.25.430(4)(H) *Carports and garages*

A minimum setback of five feet from any property line shall apply to carports and garages in any residential zoning district if:

- (i)The topography of the lot makes construction a hardship;*
- (ii)The carport or garage has a maximum height of 17 feet measured from the finished garage floor level, instead of from the datum established in 49.25.420(b), and a maximum gross floor area of 600 square feet;*
- (iii)Sight distance is approved by the director; and*
- (iv)Enclosed space directly under the garage shall be subject to the above setback exception, and no additional stories are allowed on top of the garage.*

This property and boat garage proposal does not meet the criteria listed above. The proposed gross

floor area exceeds the maximum allowed by 40 feet, the lot is relatively level so topography is not a hardship, and the height of the building exceeds the 17 foot maximum height to qualify for this exception as well.

The intent for properties that have common wall subdivisions in a D5 zoning district to have larger side yard setbacks than other properties in the D5 zoning district is to compensate for the zero foot setback where the two dwelling units are connected. Providing the additional 5 feet of setback on the side yards makes up for the zero foot setback between the structures. This same provision for common wall subdivisions in other zoning districts is not applied because the other zoning districts that allow common wall subdivisions are for higher density or multi-family zoning districts. As defined in the Land Use Code CBJ § 49.25.210(c) D5 zoning is primarily for single family residential.

The D-5, residential district, is intended to accommodate primarily single-family and duplex residential development at a density of five dwelling units per acre. D-5 zoned lands are located in the urban service boundary and are served or can be served by public water and sewer.

Comments were requested from CBJ General Engineering, CBJ Lands, CBJ Building Codes Official, CBJ Streets, and the Fire Department. As of the date of this memorandum comments have not been received from the Fire Department.

Ed Foster, CBJ Streets Division
Streets Division has no objections to this variance.

Heather Marlow, CBJ Land Department
Lands Department has no objections to this variance.

Ron King, General Engineering
Drainage does not appear to be an issue, looking at the pictures.

Charlie Ford, Building Codes Official
The walls of the garage are required to be a minimum of 5' with the eaves a minimum of 2' away from the property line and the existing structures. It appears from the drawings that this will work. We will need an as-built. If the eaves are closer than 5' to the property line they will need to be one hour fire rated on the underside.

Variance Requirements

Under CBJ §49.20.250 where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of Title 49, the Board of Adjustment may grant a Variance in harmony with the general purpose and intent of Title 49. A Variance may vary any requirement or regulation of Title 49 concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A Variance may be granted after the prescribed hearing and after the Board of Adjustment has determined:

- 1. That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.***

The relaxation would give the property owner relief by allowing them to move forward with their building plans and construct a boat garage within a required setback. The applicant has a large lot for a D5 zoning district. The minimum lot size for a D5 lot is 7,000 square feet, this lot has a lot area of 12,296 square feet. The proposed location of the boat garage is over 90 feet from the front property line (see attachment B). There appears to be room to relocate the boat garage so that it complies with the setback requirements.

There are many other common wall subdivisions in the neighborhood. There does not appear to be any permanent structures within the 10 foot side yard setback. During a site visit to the neighborhood the only structure that appeared to be closer than 10 feet to the side yard property line was a temporary carport structure.

The relaxation requested does not give substantial relief to the property owner and is not consistent with justice to other property owners.

No. Staff finds that this criterion is not met.

- 2. That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.***

The intent of Title 49 is established in Section CBJ §49.05.100 Purpose and Intent. If approved this variance will meet the intent of the Land Use Code, specifically CBJ §49.05.100(5) “to provide adequate open space for light and air.” And in part CBJ § 49.05.100(4) “to ensure that future growth is of the appropriate type, design and location....”

The side yard setback has been increased from 5 feet to 10 feet because of the common wall subdivision. The intent of the increase in setback in common wall subdivisions is to provide the setback that is lost in the development of a common wall. Providing the additional 5 feet

of setback on the side yards makes up for the zero foot setback between the structures.

The public health and welfare will be preserved as the proposed garage will be located so as to not impact sight visibility and will maintain the existing character of the neighborhood.

Yes. Staff finds that this criterion is met.

3. *That the authorization of the Variance will not injure nearby property.*

The adjacent neighbor has submitted written testimony with concerns that the construction and maintenance of the structure will cross the property line and would result in a loss of vegetation that currently exists along the property line (see attachment C).

The applicant in their submittals states that they do not plan on removing any vegetation along the property line for the construction of this boat garage. Approving this variance or any permit would not authorize the applicant to cross the property line to construct or maintain the proposed structure.

General Engineering has no concerns with drainage as a result of this construction. There has been no evidence presented that suggests that this Variance proposal will injure nearby property.

Yes. Staff finds that this criterion is met.

4. *That the Variance does not authorize uses not allowed in the district involved.*

The current use is single family residential and detached accessory structures like a garage or carport are normally associated with this class of use. The use is allowed within this district, per CBJ §49.25.300(4).

Yes. Staff finds that this criterion is met.

5. *That compliance with the existing standards would:*

(A) *Unreasonably prevent the owner from using the property for a permissible principal use;*

The property is currently developed with a single family common wall development, which complies with all setback requirements. Additionally, the property has an accessory structure which also complies with setback requirements.

No. Staff finds that sub-criterion 5A is not met.

- (B) *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;***

Many property owners in Juneau have boat garages to store and protect their boats from the inclement weather. There are many detached accessory structures within the subdivision. The property owner has the ability to construct a boat garage and meet the setback requirements.

Complying with the standards would not unreasonably prevent the property owner from using the property in a manner which is consistent as to scale, amenities, appearance or features with the existing development in the neighborhood of this property.

No. Staff finds that sub-criterion 5B is not met.

- (C) *Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive;***

This lot exceeds the minimum lot size by over 5,000 square feet. This lot is oddly shaped with a wider frontage of 97 feet on Blackerby which tapers off to 38 feet toward the rear of the property. There is a moderate slope to access the property with a driveway that curves around the dwelling unit. The applicant is proposing to build the structure towards the rear of the property to allow for a larger area to maneuver a truck, boat, and trailer.

There is ample space on the property to locate the new boat garage in such a way that it meets Land Use Codes. Information has not been received to suggest that a unique feature exists that would make complying with the standards unnecessarily burdensome or unreasonably expensive.

No. Staff finds that sub-criterion 5C is not met.

or

- (D) *Because of preexisting nonconforming conditions on the subject parcel the grant of the Variance would not result in a net decrease in overall compliance with the Land Use Code, CBJ Title 49, or the building code, CBJ Title 19, or both.***

There are no preexisting nonconformities on this lot. Therefore, this sub-criterion is not applicable.

N/A. Staff finds that this sub-criterion 5D is not applicable.

No. Staff finds that criterion 5 is or is not met because sub-criteria 5A, 5B, or 5C are not met.

6. *That a grant of the Variance would result in more benefits than detriments to the neighborhood.*

Approving this variance, would allow the owners of the property to neatly store their boat and boating accessories versus parking their boat on the lot and piling the boating accessories in the yard. The permanent boat storage building will eliminate the need to construct a less attractive temporary boat shelter every year. The storage structure will enhance the property's value and be visually appealing for the neighborhood.

Yes. Staff finds that criterion 6 is met.

CDD Building Code Official is supportive of the variance application; however, staff is not recommending in favor of this application because the variance criteria 1 and 5 are not met as discussed above. If additional information becomes available at the hearing and the Board of Adjustment makes positive findings for the case, staff recommends the following conditions:

1. As-built survey, verifying 5' setback for the structure and 40" for eaves, shall be submitted before Certificate of Occupancy is issued.

49.70.900-49.70.1097 COASTAL DEVELOPMENT, HABITAT, AND WETLANDS

ALASKA COASTAL MANAGEMENT PROGRAM (ACMP)

Not applicable. This project does not require a state-coordinated ACMP review.

FINDINGS

1. *Is the application for the requested Variance complete?*

Yes. The variance application is complete.

2. *Will the proposed development comply with the Alaska Coastal Management Program?*

Yes. As noted in the Alaska Coastal Management Program section of the staff report, the ACMP does not apply to this variance request.

3. *Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?*

No. The variance as requested does not meet CBJ §49.20.250 grounds for variances as discussed above in criteria 1 and 5.

RECOMMENDATION

It is recommended that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, VAR20110001. The Variance permit if approved would allow for a boat garage to be constructed 5 feet from the property line with eaves 40 inches from the property line.

CDD staff is not recommending in favor of this application, however, if additional information becomes available at the hearing and the Board of Adjustment makes positive findings criteria 1 and 5 for the case, staff recommends the following conditions:

1. As-built survey, verifying 5' setback for the structure and 40" for eaves shall be submitted before Certificate of Occupancy is issued.