

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING

DATE OF MEETING: Tuesday, **April 9, 2019**
TIME OF MEETING: 4:00 p.m.
PLACE OF MEETING: Commission Chambers, First Floor, Muskegon City Hall

AGENDA

- I. Roll Call
- II. Approval of Minutes of the Regular Meeting of November 14, 2017.
- III. Election of Officers (Chair and Vice Chair)
- IV. Public Hearings
 - A. Hearing; Case 2019-01: Request for a variance from Section 2311 of the zoning ordinance to allow an 8-foot fence to be constructed on a residential property at 2027 Bourdon St, by Jill Montgomery-Keast.
 - B. Hearing; Case 2019-02: Request for a variance to reduce the minimum side setback to less than 6 feet at 1924 Dowd St, by Daniel Cardoso.
- V. New Business
- VI. Old Business
- VII. Adjourn

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CITY COMMISSION AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES

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Ann Marie Cummings, City Clerk
933 Terrace Street
Muskegon, MI 49440
(231) 724-6705

TTY/TDD: Dial 7-1-1 and request that a representative dial 231-724-6705

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

November 14, 2017

Chairman R. Hilt called the meeting to order at 4:00 p.m. and roll was taken.

MEMBERS PRESENT: R. Hilt, S. Warmington, B. Larson, W. German, J. Witmer

MEMBERS ABSENT: E. Fordham, excused

STAFF PRESENT: M. Franzak, D. Renkenberger

OTHERS PRESENT: F. Glancy, 1370 Ridge Ave.

APPROVAL OF MINUTES

A motion that the minutes of the regular meeting of October 10, 2017 be approved was made by S. Warmington, supported by B. Larson and unanimously approved.

PUBLIC HEARING

Hearing; Case 2017-07: Request for a variance from Section 2311 of the zoning ordinance to allow a shed to be expanded in a front yard at 1370 Ridge Avenue, by Fred Glancy. M. Franzak presented the staff report. The property owner would like expand the shed in the back of the home; however, the property has two front yards and no back yard because it is located between Ridge Ave and Glen Ave. This is the only home with frontage on Glen Ave that doesn't face the street. Sheds cannot be located in front yards per the zoning ordinance. The existing shed is considered legally, non-conforming and cannot be expanded. The variance request is for the expansion of the shed only. Neighbors within 300 feet of this property were notified; at the time of this writing, staff had not received any comments. Staff considers there to be a valid hardship on the property, as it is has frontage on two streets which makes it difficult to place a shed on the property.

M. Franzak stated that he had searched for a previous variance for this property to allow the current shed but he did not locate one; therefore, ZBA approval was required for the proposed addition. The shed would be located behind the house on the Glen Ave. frontage, which was the home's back yard. F. Glancy stated that he had spoken to all affected neighbors and none noted any objections to his request, as long as the shed was not in the front yard on the Ridge Avenue side. He confirmed that he planned to attach the new shed to the current shed on the property.

A motion to close the public hearing was made by S. Warmington, supported by B. Larson and unanimously approved.

The following findings of fact were offered: a) that there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the

property that do not apply generally to other properties or class of uses in the same zoning district, i.e. that the ordinance defines this property as having two front yards; b) that the dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity, c) that the authorizing of such dimensional variance will not be of substantial detriment to adjacent properties, d) that the alleged difficulty is caused by the ordinance and not by any person presently having an interest in the property, or by any previous owner, e) that the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner, and f) that the requested variance is the minimum action required to eliminate the difficulty.

A motion that the variance request to allow the expansion of the current shed fronting Glen Avenue, at 1370 Ridge Avenue be approved, based on the review standards in Section 2502 of the Zoning Ordinance and with the condition that any necessary permits are obtained, was made by S. Warmington, supported by W. German and unanimously approved, with R. Hilt, S. Warmington, B. Larson, W. German, and J. Witmer voting aye.

OLD BUSINESS

None

OTHER

None.

There being no further business, the meeting was adjourned at 4:15 p.m.

DR

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
STAFF REPORT

April 9, 2019

Hearing; Case 2019-01: Request for a variance from Section 2311 of the zoning ordinance to allow an 8-foot fence to be constructed on a residential property at 2027 Bourdon St, by Jill Montgomery-Keast.

BACKGROUND

1. The property is zone R-1, Low Density Single Family Residential. Fences in side and rear yards may only be a maximum of six feet tall.
2. The applicant is seeking approval of an eight feet fence in the rear yard because of nuisance issues with the neighbor. Please see the variance questionnaire attached.
3. There is currently a six-foot tall fence in this location.
4. The variance request is for an eight-foot tall fence in the back yard on the southern edge of the property.



Aerial Map



Zoning Map



VARIANCE REVIEW STANDARDS

Questions to consider when reviewing a variance request:

- a. Are there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district?
- b. Is the dimensional variance necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity?
- c. Will the authorizing of such dimensional variance be of substantial detriment to adjacent properties?
- d. Is the alleged difficulty caused by the ordinance and not by any person presently having an interest in the property, or by any previous owner?
- e. Is the alleged difficulty founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner?
- f. Is the requested variance the minimum action required to eliminate the difficulty?

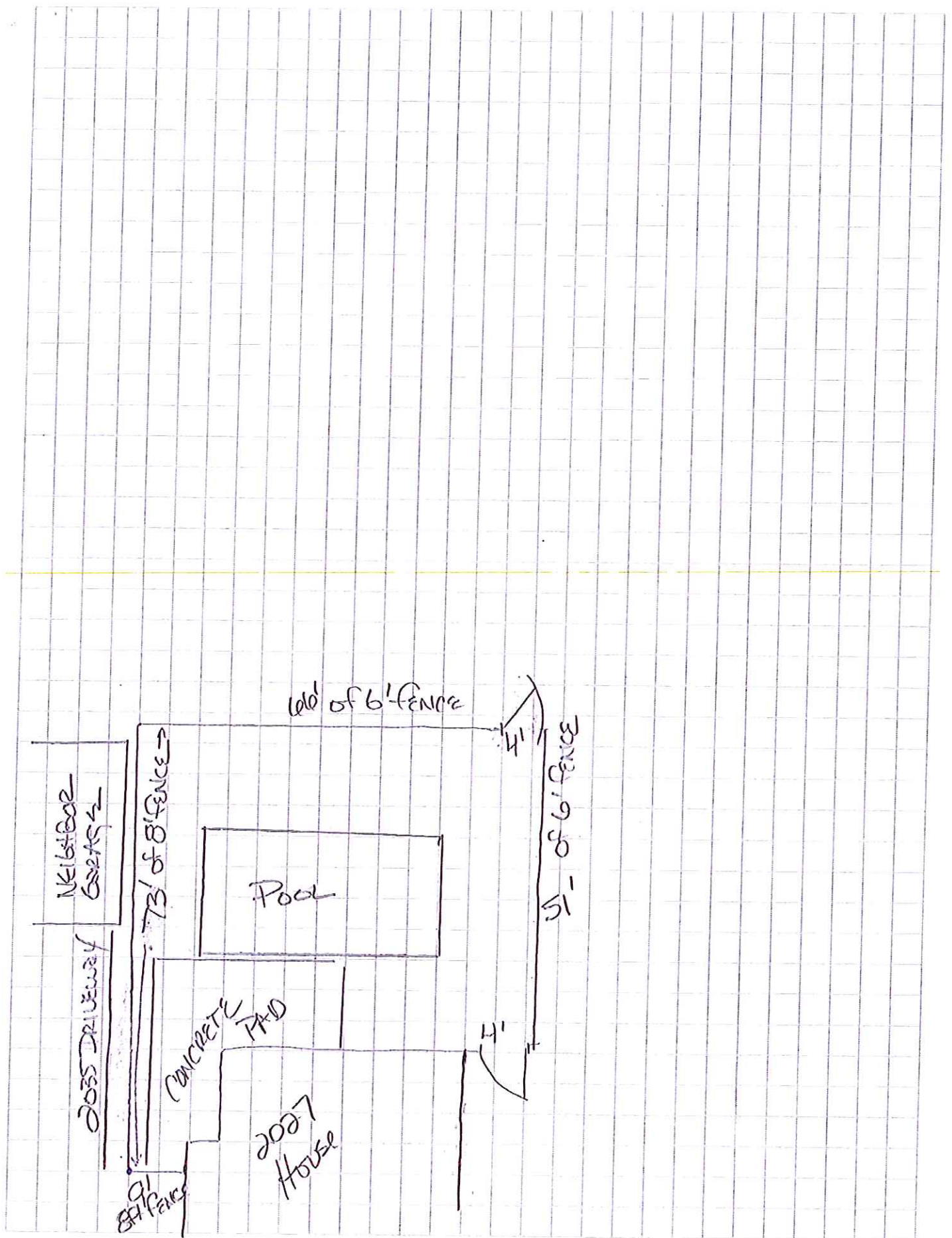
DETERMINATION:

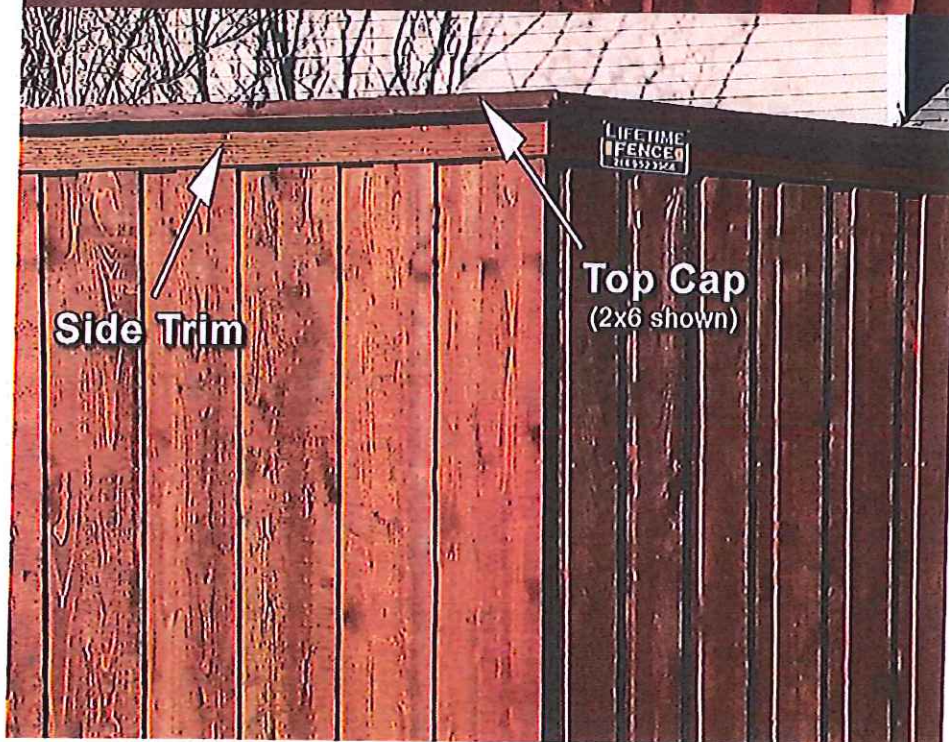
The following motion is offered for consideration:

I move that the variance request to allow an 8-foot fence to be constructed in the rear yard on the southern edge of the property at 2027 Bourdon St be (approved/denied) based on the review standards in Section 2502 of the Zoning Ordinance.

Request 2027 Bourdon – Response to Facts and Conditions

- 1. There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district. Neighbor residing directly south of 2027 Bourdon (2035) has driveway butting up to next to house. 2027 has a pool in the back yard that needs to be properly enclosed and accesses limited as much as possible.**
- 2. Such a dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity. Owner at 2035 works on trucks and cars, including stock cars in driveway and garage evenings and weekends. Fumes and extreme noise from activity reduce owner of 2027's ability to enjoy backyard recreation area. Owner of 2027 is also subjected to viewing the automobile work area at 2035 through kitchen and bathroom windows.**
- 3. Proposed use would not alter the essential character of the area and will not materially impair the purposes of this ordinance or the public interest. New fence will be built in character with remaining fence and include decorative top.**
- 4. The alleged hardship is caused by this ordinance and has not been created by any person presently having and interest in the property, or by any previous owner. The current fence is built according to ordinance - 6 foot tall and extends the full length of the property and joins to additional sections of fence, which surround an inground pool.**
- 5. The alleged hardship is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. The proposed fence will be an enhanced improvement over the current fence. Because of the need for sound reduction, the fence boards will be constructed in an overlapping manner, costing substantially more than what is actually required.**
- 6. The requested variance is the minimum action required to eliminate the hardship. This action will not totally eliminate the noise generated from the neighboring driveway and garage, but it will deaden some of the sound. It will also block the view of the garage and multiple cars.**
- 7. The use variance does not permit a use specifically identified by this ordinance as excluded from the particular zone in which requested. Fences are permitted in R1 and required for pool enclosure.**
- 8. The extent to which the ordinance protect users or neighbors from threats to health, safety and welfare shall be considered. The current fence is built with horizontal boards on the outside of the fenced area. The new fence will be designed to have horizontal boards on the inside of the property (if there are any), reducing the ability to access the pool area.**
- 9. In no case shall a use that is a nuisance per se, or a use which in that particular location constitutes a nuisance, be granted as a use variance. In all actuality, nearly $\frac{1}{2}$ of the 72' of the current fence on south side is next to the neighbor's garage, which is already at least 15' tall. The new fence will be erected in the same configuration and in the same place as the current fence. The remaining 2 sides of the fence will be in accordance with the ordinance rules of 6' in height.**





Hearing; Case 2019-02: Request for a variance to reduce the minimum side setback to less than 6 feet at 1924 Dowd St, by Daniel Cardoso.

BACKGROUND

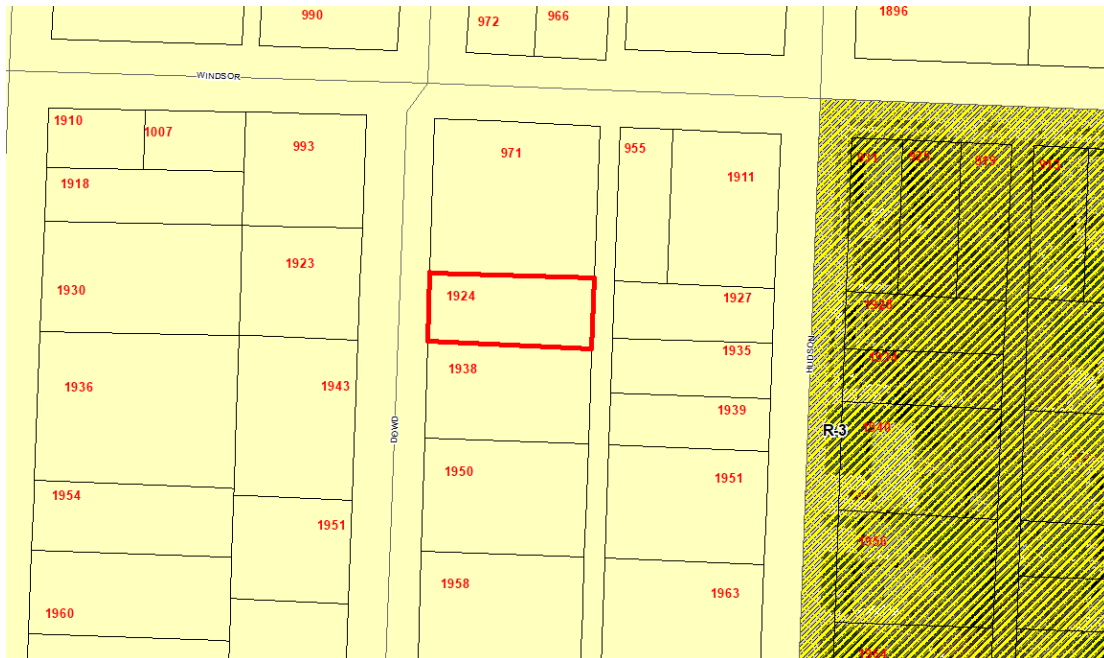
1. The property is zone R-2, Medium Density Single Family Residential. A fire at the property destroyed the attached garage, which sat only two feet away from the side property line on the south side of the lot.
2. The ordinance requires attached garages to meet the setback requirements of the home, which is six feet for side yards.
3. The applicant is seeking a variance to rebuild the garage in the same place.
4. The variance request is to allow a two-foot side setback on the southern side of the property.
5. Please see the enclosed zoning questionnaire.



Aerial Map



Zoning Map



VARIANCE REVIEW STANDARDS

Questions to consider when reviewing a variance request:

- a. Are there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district?
- b. Is the dimensional variance necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity?
- c. Will the authorizing of such dimensional variance be of substantial detriment to adjacent properties?
- d. Is the alleged difficulty caused by the ordinance and not by any person presently having an interest in the property, or by any previous owner?
- e. Is the alleged difficulty founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner?
- f. Is the requested variance the minimum action required to eliminate the difficulty?

DETERMINATION:

The following motion is offered for consideration:

I move that the variance request to reduce the minimum side setback to two-feet (garage portion only) be (approved/denied) based on the review standards in Section 2502 of the Zoning Ordinance.

City of Muskegon Planning & Zoning Application

Page 2 – Variances

Please provide an answer to the following questions:

1. Why are there "exceptional or extraordinary circumstances applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district"? (i.e., Why is your property unique compared to others in the neighborhood?)

Fire Destroyed the garage, Do not want to change Anything, only want to put it Back the way it was prior to the Fire.

2. Why is a variance "necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity"? (i.e., What property rights do your neighbors enjoy that you can't because of the nature of your property?)

Majority of Surrounding homes have Structures built as close or closer to property Lines than what I am proposing

3. How will the authorizing of a variance "not be of substantial detriment to adjacent property and not materially impair the purposes of the City's zoning ordinance or the public interest"? (i.e., Will granting a variance to you negatively affect your neighbors or the public in general?)

Granting of the variance will positively affect the neighbors, ~~adding an~~ Having an attached garage will raise the property value

4. Explain why the alleged difficulty is "caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner": (i.e., Who/what is the cause of the difficulty?)

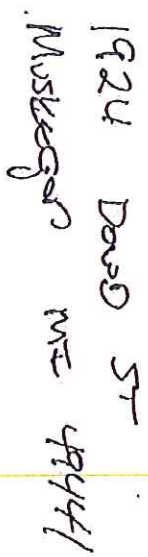
The cause is due to the original build and how close they put it to the south property line

5. The alleged difficulty is "not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner" because: (i.e., Do you have reasons, other than financial gain, for asking for the variance?)

There was a garage there before that was destroyed by a fire, just want to ~~put~~ build it back

6. Is the requested variance "the minimum action required to eliminate the difficulty"? (i.e., Could you get by with less of a variance from the ordinance requirement(s)?)

Due to the existing house it wouldn't be possible to add an attached garage without the variance.



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Existing Foundation

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