

## **MEMORANDUM**

**To:** Zoning Board of Appeals

**From:** Howard Koontz, City Planner

**Date:** December 1, 2011

**Subject:** ZBA 11-122: Request to encroach rear yard setback for new construction of an expansion of an existing single family home and to permit an accessory structure to be located in the side yard for an accessory garage

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### **ITEM DESCRIPTION**

Michael Higdon, representative on behalf of Pramod Reddy, owner of 4507 Dunwoody Club Drive, Dunwoody, GA 30350, requests the following: Variance from Chapter 27, Section 27-186 to reduce the rear setback to construct a screened porch and Section 27-1303 to construct an accessory garage in the side yard.

The property in question is located on the south side of Dunwoody Club Drive, just south of it's the DeKalb/Fulton County line and is currently zoned R-1000 (Single Family Residential). The applicant's request is to expand the use and construction of an existing non-conforming characteristic of a building into a required rear yard setback. Additionally, the applicant wishes to construct a detached garage on the western side of the driveway. The lot is shaped like an elongated triangle and has pervasive tree cover.

The site -zoned R-100- comprises an existing single-family detached home on a roughly 27,450 square foot (0.63 acre) lot. The property abuts single-family home development on the south, east, and west, likewise zoned R-100. The property to the north is a house of worship located in the City of Sandy Springs. The home as it sits today is non-conforming according to the City of Dunwoody Zoning Ordinance by the fact that is constructed too close to the rear and side property lines. The applicant proposes to construct a screened-in porch on the rear that will encroach the rear setback 20 feet. The porch addition is proposed to be approximately 300 square feet. Because the entirety of the addition will exist in the required rear yard, the applicant is required to secure a variance from §27-186. Secondly, the applicant wishes to construct a detached garage in the side yard that is approximately 900 square feet. The proposed addition is to be located on the western side of the driveway and is placed there due to the irregular shape of the lot. As such, the applicant is requesting a variance to Section 27-1303 to permit an accessory structure to be located in the side yard.

This determination that the home was non-conforming was reached by examining §27-186(5):

“Minimum rear yard: 40 ft.”

Therefore the current request could not be permitted for construction under §27-1608:

“Any building or structure with nonconforming characteristics which is occupied by a conforming use shall not be enlarged, expanded, moved, or otherwise altered in any manner that increases the degree of nonconformity.”

It is from §27-186 and §27-1303 that the applicant seeks relief with this variance request, and §27-1608 does not permit the expansion of an existing nonconforming structure.

### **BACKGROUND**

Article 27, §27-1574(1) identifies the following criteria for evaluation that should be examined when determining the appropriateness of a variance:

- a) Variances from the provisions or requirements of this Chapter shall be authorized only upon making all of the following findings:
  1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this Chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district; ***The subject lot is irregularly shaped, as the western side of the lot is long and narrow, and the depth of the yard is limited to the eastern side, which is only a total of 58 feet in length.***
  2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located; ***The request for the garage does not exceed the minimum required since the shape of the lot is not conducive to construction of accessory structures in the rear yard. Affording the applicant the permission to construct this screened-in porch addition would be a special privilege not available to other properties in the zoning district.***
  3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located; ***Staff cannot identify any public welfare related concerns associated with this request. Further, there is substantial tree cover which would attenuate if not eliminate any perceived visual detriment to the adjoining property.***
  4. The literal interpretation and strict application of the applicable provisions or requirements of this Chapter would cause undue and unnecessary hardship; ***The request is discretionary in nature and not required to avoid any undue or unnecessary hardship.***



and

5. The requested variance would be consistent with the spirit and purpose of this Chapter and the City of Dunwoody Comprehensive Plan text. ***The request on its face does not appear to impact the Comprehensive Plan at all.***

## **RECOMMENDATION**

Staff **does not support** the requested variance for the rear setback, due to its discretionary nature and violation of Section 1608 that does not permit the expansion of a nonconforming characteristic. Staff **does support** the request for variance to permit a structure in the side yard because it meets the criteria enumerated in Section 2701574. If approved by the Zoning Board of Appeals, approval should be conditioned to a site plan.

## **Attachments**

- Application
- Location Map