

**CVA14-00001 / JEROME TERLISNER**

Location: 4015 W. Hillcrest Drive

VARIANCE FROM THE SIDE AND REAR YARD SETBACKS FOR AN EXISTING DETACHED ACCESSORY STRUCTURE LOCATED IN AN R-1C (SINGLE FAMILY RESIDENTIAL) ZONE.

**Todd Tucker** (Current Planning) – This variance request is for a reduction in a rear and side yard setback. The variance request is a result of a code enforcement violation regarding a shed located on the side in the back corner of this property. The roof of the shed was over the property line and snow and water were dripping onto a fence causing some water damage. The eaves on the shed have been cut back and gutters were installed to redirect water. However, the shed still remains in a location which is in violation. Current Planning is unable to identify any hardship with the property where an exceptional circumstance is associated to justify the variance. The residential property is over 11,000 square feet in size. It's rectangular and it's flat. There are some options and here are some photos of the shed. There's the existing shed. This is along the rear or the south property line. You can see the proximity to the fence which is on the property line and this is on the east side of the property. You can see the relation to the shed there.

There are some options for the owner to comply with the development code. Those options would be to reduce the shed to 120 square feet or less and to reduce the size under 7'. Right now the shed is about 12' in height and it's over 120 square feet. If the shed is reduced to those dimensions it can remain where it's at. The shed could be moved on the site. It is less than 500 square feet so it could take advantage of our reduced setbacks that we allow for smaller detached structures and be placed at a rear yard setback of 9' and the side setback is 3', or the shed could be removed altogether. There are options the property owner does have to bring this accessory structure in compliance with the code. Current Planning is recommending denial of the variance request. If the variance is approved the Commission does have options. You could approve it but we are recommending denial of the application.

**Jerome Terlisner** – I applied for the application because I physically don't have room to move it 9' from the back fence. As it shows in my application there's a 3' diameter pine tree there and the maximum I could move the shed forward is only about 7'. If I move it any more, I would have to move it to the side to accommodate the tree and would put the shed approximately in the middle of my small backyard. I did so as the Code Enforcement Officers suggested. I cut 1' off of the roof and I put up rain gutters. I even added another 36' of downspout to divert the water clear to the other side of the shed. I did cut down the size of the shed, it's only 96 square feet right now but in the process I thought this is perfect, I could have myself an outdoor kitchen. I always wanted one so I left the roof and the floor and I started cooking out there. I thought in the spring I'll put some improvements out there. I was going to put some flooring in there and fix it up a little nicer because I really like to cook. I thought this is a positive thing. I've got myself an outdoor kitchen. I got a smaller shed, but that's fine.

As far as the damage to the fence goes, I've lived there 28 years, the shed has been there that long and that fence back there has been rotting for years. I'll agree it needs to be replaced. It always has been.

The shed dripping on the fence had no effect on whether it was causing damage to the fence or not. That was there way before. It was there when I bought the house January 8, 1987. It's been there a long time. Just walking around the neighborhood I counted along Greenbrier where I live to the east there are 15 sheds all within what they call a setback. Frankly, I've never heard that word before this issue. I've never heard of such a thing. Why would I? I see in terms of aesthetics to the neighborhood and all of that leaving the shed right where it is if just fine. In fact, I can show you places within a block, that the sheds are part of the fence, my neighbors and I'd really hate to lose my outdoor kitchen.

**Commissioner Danley** – Is there power to this shed?

**Jerome Terlisner** – No, no power, no plumbing nothing.

**Commissioner Danley** – So smoking, barbequing?

**Jerome Terlisner** – Yes, I've got a couple of gas grills and a charcoal grill because some things are better on charcoal and some things are better on gas.

**Commissioner Danley** – In the letter you wrote to us it stated you were willing to pay for potentially half of the fence?

**Jerome Terlisner** – That's what I told my backyard neighbor and he refused to respond. In fact he hasn't spoken with me since.

**Commissioner Danley** – This last question is for staff to answer. In the project report it says "every other shed in the vicinity meets or exceeds the setback regulation for the zone". So we have Mr. Terlisner saying there are numerous sheds in violation, but the reports saying not any of them violate. Is that correct?

**Todd Tucker** – Not being the one who actually reviewed the application or wrote the report I'll have to take Sue's word for it. I don't know if an actual survey was done to go out physically and look in the area. I know Code Enforcement is involved in this and to tell you the truth, I don't know 100% that statement is true but if it's in the staff report I have to assume that it's correct.

**Jerome Terlisner** – Can I make a statement about that? The codes, the citations were not issued until after I complied with Code Enforcement's wishes and she even admitted to me that my across back fence neighbor talked and convinced her that she should cite me anyway, even though I complied with her wishes.

**Commissioner Bradbury** – I've got a question for staff. I just want to make sure I've got this straight in my mind. The shed could remain if it was reduced in size?

**Todd Tucker** – That is correct. The Ordinance doesn't have a setback requirement for structures that are less than 120 square feet in size.

So the applicant is correct, he did reduce the shed portion size but the overall structure, we still measure if it's covered with roof that's part of the structure and it has to comply with the size requirement. If the overall structure was reduced in size to 120' or less and the height was reduced to 7', it could remain where it's at. Or like I said, it could be moved onsite into a location where it would comply with the reduced setbacks that are allowed for structures less than 500 square feet.

## **PUBLIC TESTIMONY**

**Steve Largent** – I'm the neighbor to the south. I have a few comments about what I see in writing. I bought my place in 2005, that shed was not there. About 2 or 3 years later he built it. I was a little bit alarmed because it was so big and the overhang came directly over the fence so he could store stuff between the fence and shed and have it dry. It put all the water on the fence, I think its 18', that fence is totally rotted. You could grab any of the...it's built with 4x4's into the ground and then 2x2's attached to it. All those 2x2's are so rotten you can grab them and pull them apart by your bare fingers. In no case is the rest of the fence is that true. The fence does need some work, particularly on his side. I don't believe it's ever been painted since it was built. My side needs painted again and I uncovered all this when I decided I need to fix the fence and paint it.

In consideration of how old that building is I think you can look at the pictures of the roof, the siding, the paint, there's one thin coat of paint that was sprayed on. You can see actual drops of paint on the clear plexi-glass that would not be clear in 30 years, if that building were 30 years old as he stated in his comments. It's probably not relevant but there was 90 days from the time I first asked him to fix that building before I turned it into enforcement. The area association President visited at night and didn't even look at the building. I have an email from him that I submitted showing that he went there at 7 PM in the middle of the winter, didn't see the building and based on Jerry's testimony it had been there for nearly 30 years. He agreed it should stay.

When I talked with Jerry he admitted to me that he built that shed himself to reduce his storage expenses. It wasn't something that was there. Part of the issue is, well once it's not dripping on the fence and destroying the fence, I don't have a great deal of objection to it but I do think code serves a very useful purpose. They let everyone know what the rules are. They make for better neighbors, just like good fences make for good neighbors. Good code makes for good neighbors and I hope you enforce the code as it's written. I believe part of the reason for the code is fire hazards. That's a 12' building right on the property line. The sheds he commented on are 7' or less and there are lots of those in the neighborhood. There's no storage sheds that are the height of a house against the property line in that neighborhood.

## **REBUTTAL**

**Jerome Terlisner** – I have my east side neighbor here and he has no objection to that shed either. I thought when the Code Enforcement Officer wanted to reduce the size of the shed; I looked at it as a great opportunity. I could make myself an outdoor kitchen and as far as the height of the shed, I was told the height of the roof doesn't count. It's the height of the walls that got me seven feet. As far as reducing, I didn't want to take the whole shed down and rebuild it.

I saw no reason to do that and as far as the fence rotting, the entire fence is rotted. Clear down the whole property line.

It's been there so long because it was there when I bought that place, so I don't think the fence rotting issue is an issue at all because the whole thing is ready to fall down because it's been there since I have. I didn't build the fence.

**PUBLIC HEARING CLOSED**

**COMMISSIONER GILLESPIE MOVED TO DENY CVA14-00001 FOR THE REASONS STATED IN THE PROJECT REPORT.**

**COMMISSIONER GIBSON SECONDED THE MOTION.**

**Commissioner Gillespie** – I'll be voting to deny this variance because obviously there are some important and factual disagreements. It seems to me the purpose of the code in general is so this Commission doesn't have to get involved in adjudicating detail disagreements as we've heard today. The purpose of the code is to set general rules and guidelines that everybody follows precisely so we can avoid having to take testimony on the status of a fence and verify who is correct. For those reasons I will be voting in favor of the motion.

**Commissioner Danley** – Just to make sure I think we're all on the right page, I will be voting to also deny the application, but to be clear it doesn't mean that options are tear it down and that's it. The options I think still available are to reduce the size of the structure or move the structure as far as you can. I know there is a tree issues but at least there are a few options. To Commissioner Gillespie's point that's the biggest factor in these decisions and the fact we have to get along. In this case it's not happening and it's not happening because we do have a violation of the code so as an acting body, we have to consider that. We have to try to defend the code and support the code as much as possible for numerous reasons in addition to the ones we're hearing this evening.

**ROLL CALL VOTE**

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| <b>COMMISSIONER GILLESPIE</b> | <b>AYE</b> |
| <b>COMMISSIONER GIBSON</b>    | <b>AYE</b> |
| <b>COMMISSIONER MEYER</b>     | <b>AYE</b> |
| <b>COMMISSIONER DANLEY</b>    | <b>AYE</b> |
| <b>COMMISSIONER BRADBURY</b>  | <b>AYE</b> |

**ALL IN FAVOR NONE OPPOSED, MOTION CARRIES.**