TOWN OF FLETCHER

PRESTON BLAKELY
MAYOR

MARK E. BIBERDORF
TOWN MANAGER

COUNCIL MEMBERS:
TREVOR LANCE
JIM PLAYER
KEITH REED
AMBER MCKINNEY

Exhibit A

55 Baldwin Circle
Side Setback Variance

Planning Department Staff Report
Tyler Morrow, Planning and Zoning Director

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Process for reviewing a variance

The Zoning Board of Adjustment may only grant a variance having first held a public hearing on the matter and having made the following determinations:

a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

b) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

c) A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.

e) The special circumstances are not the result of the actions of the applicant.

f) The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

The following are **not** cause for a variance:

1) The citing of other nonconforming or conforming uses of land or structures in the same or other districts.

2) The request to permit a use of land, building or structure which is not permitted by right or by special use in the district involved.

3) Economic hardship or the fact that property may be utilized more profitably with a variance.

The Zoning Board of Adjustment, in granting a variance, may prescribe appropriate conditions and safeguards in conformity with this Code. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this Code and shall be punishable as prescribed in Article 17.

The concurrent, supermajority vote of four-fifths (4/5) of the voting members of the Zoning Board of Adjustment shall be necessary to grant a variance. In all matters coming before the Zoning Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. All decisions of the Zoning Board of Adjustment shall be in writing and filed with the Administrator.

Property Information

- According to Henderson County records, the subject property is identified by PIN 9653-73-0449 and is zoned R-2, Medium Density Development District and is also designated as Heart of Fletcher Town Center Housing East. The subject property bares the address of 55 Baldwin Circle.
- According to Henderson County records, the property contains approximately 0.6 acres, or 26136 square feet.
- According to Henderson County records, the property is developed with one structure measuring approximately 864 square feet.
- Town of Fletcher records indicate that Baldwin Circle is maintained by the Town.
- According to Henderson County records, Crissy N. Brown acquired the property on July 10, 2009, by warranty deed.

Summary of the Variance Request

The Planning and Zoning Department has received an application from Crissy N. Brown and Shawn Lewis of Stonewater Inc. for a variance from Article 2.5 RESIDENTIAL DISTRICTS (R-1, R-1A, R-2, R-3), B. Minimum Development Standards: R-2 Side Setback (Minimum)and Appendix 2 Heart of Fletcher Overlay: Development Guidelines section 5 5. TOWN CENTER HOUSING – EAST Building Location, Side in accordance with the definition of "Setback" in Article 18 "Definitions" to reduce the required side setback for the structure from 10' to 8' on each side. This would result in a requested variance of 2' on each side. All other setback requirements will be met.

Ordinance Language

B. Minimum Development Standards:

	R-1/R-1A	R-2	R-3
1. Permitted Development Density			
Maximum Development Density (Units/Acre)	2	3	4 SF; 10 MF
3. New Development Standards (a)			
Principal Structure Dimensional Standards			
Front Setback from Right-of-Way (Minimum)	20 ft	20 ft	20 ft
Front Yard Encroachments (b)	8 ft	8 ft	n/a
Side Setback (Minimum) (c) (e)	10 ft	10 ft	10 ft/3 ft
Setback between Multi-Family Buildings	n/a	n/a	10 ft
Rear Setback from Property Line/Rear Centerline (e)	15 ft	15ft	15ft
Height in Stories (Maximum)	2.5	2.5	3
Accessory Structure Dimensional Standards			
600 sq ft or less (Side/Rear Min. Setback) (d)	5 ft *(d)*	5 ft *(d)*	5 ft *(d)*
Height in Stories (Maximum)	2	2	2

2.5 Residential Districts

(R-1, R-1A, R-2, R-3)

Ordinance Language

Dimensional Requirements:

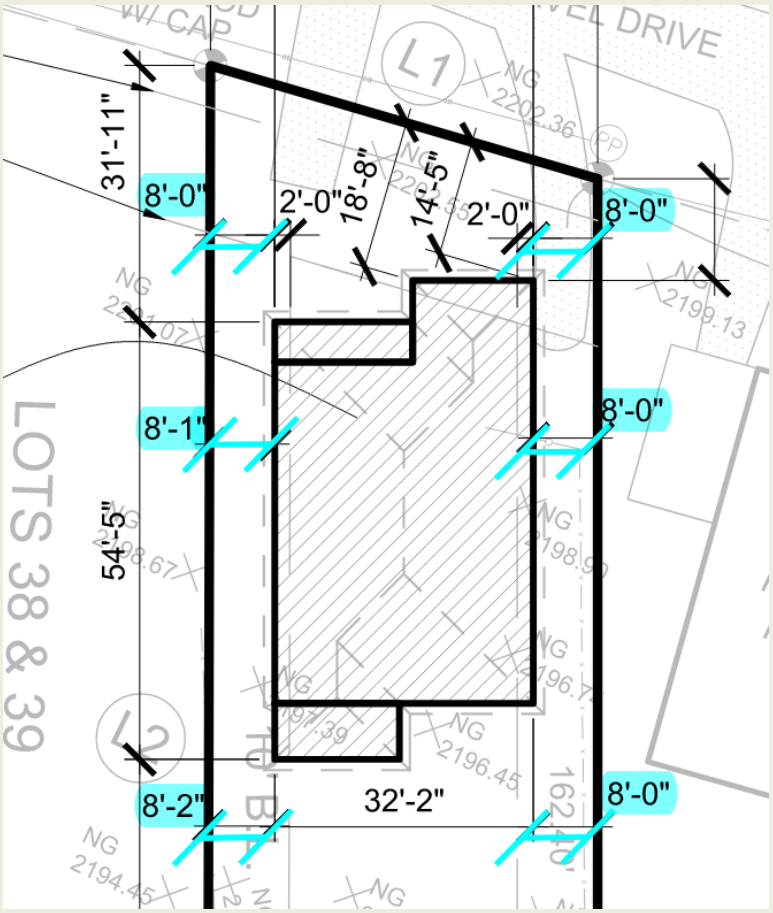
Building Height	2-3 stories (25-45 ft)
Density	8-16 units/acre
Building Location	structure shall abut BTL/setback line for 40% of lot width
Front	5-20 ft build-to line (SF); 20 ft minimum setback (MF)
Side	10 ft minimum setback
Rear	15 ft minimum setback
Transparency	30% of ground floor street-facing facade
Parking	specified in Article 9 of Land Development Code
Sidewalks	specified in Article 12 of Land Development Code
Transition Yard	specified in Article 8 of Land Development Code
Design Standards	specified in Article 5 of Land Development Code

Heart of Fletcher Overlay: Development Guidelines

5. Town Center Housing – East

Variance Request

Allowed: 10’ Minimum Side Setback **Proposed: 8’ Minimum Side Setback**

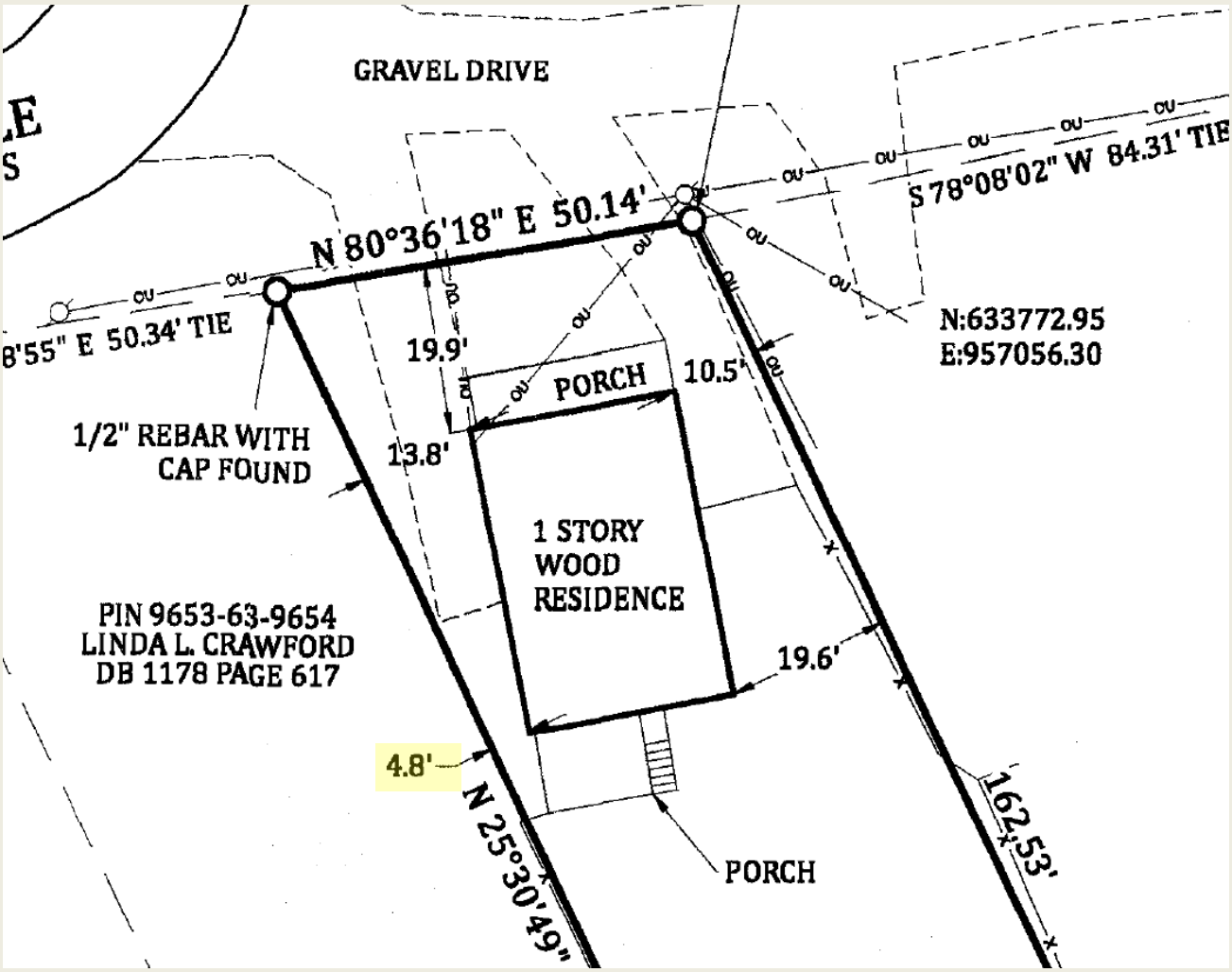


Existing Conditions of the Existing House

Below is a snapshot from a boundary survey prepared by Wilkie Surveying (Richard J. Wilkie) on June 5, 2024. As shown, the majority of the existing residence complies with the current setback requirements of the ordinance. However, the western rear portion of the structure is located only 4.8 feet from the side property line.

If the requested variance is approved, this portion of the proposed residence would be located approximately 8 feet 2 inches from the same property line, bringing that section of the structure closer to compliance than the existing legally nonconforming condition.

Additionally, the existing residence is situated at an angle on the lot. The proposed replacement residence would be more centrally aligned on the property, resulting in a more balanced placement rather than the current off center orientation.



Applicant Provided Rational for the Variance Request (Condensed from the Application)

1. If they comply with the provisions of the Land Development Code, the property owner can secure no reasonable return from, or make no reasonable use of, their property. Strict compliance with the required 10-foot setback would prevent the applicant from reasonably rebuilding the home through the approved government rebuilding program. The replacement residence must generally remain in the existing location because of the existing septic system, substantial tree coverage, and sloping terrain. Since the program does not offer a narrower home design, compliance with the setback would prevent the property from being rebuilt for its intended residential use.

2. The hardship of which the Applicant complains results from unique circumstances related to the Applicant's land. The hardship results from physical conditions and existing improvements unique to the property. The buildable area is constrained by the location of the former residence, the existing septic system, extensive tree coverage, and sloping terrain at the rear of the lot. These conditions limit where the replacement home can be located, making the requested approximate 2-foot encroachment into each side setback necessary rather than a means to increase the size or intensity of the proposed use.

3. The hardship is not the result of the Applicant's own actions. The hardship is not the result of the applicant's actions. The existing septic system, mature tree coverage, sloping rear terrain, and limited area available for reconstruction all existed before the proposed rebuild. In addition, the applicant is limited to home designs available through the government rebuilding program and did not choose an oversized custom residence. The requested encroachments are necessary to place a program approved home within the property's existing buildable area while maintaining more than 10 feet of separation from neighboring structures.

4. The variance is in harmony with the general purpose and intent of the land development code and preserves its spirit. The requested variance is limited to an approximate 2-foot encroachment into the required side setback on each side of the residence. The property will continue to be used as a single-family residence, consistent with the intended use of the property and the surrounding neighborhood. The minor encroachments will not alter the character of the neighborhood, increase the intensity of the use, or interfere with the reasonable use and enjoyment of neighboring properties.

5. The granting of the variance secures the public safety and Welfare and does substantial justice. Granting the requested variance will not adversely affect public safety or welfare. The approximate 2-foot side setback encroachments will not obstruct public access, emergency services, utilities, drainage, or the use of adjacent properties. Denial of the variance would create a hardship disproportionate to any public benefit gained through strict enforcement of the setback requirement.

Site Images



This photograph depicts the western side of the subject property from the front of the existing house.



This photograph depicts the western side of the subject property from the rear of the existing house.



This photograph depicts the eastern side of the subject property from the front of the existing house.



This photograph depicts the front of the existing house.