

BOARD OF ADJUSTMENT PUBLIC HEARING

May 8, 2025

1:00 P.M.

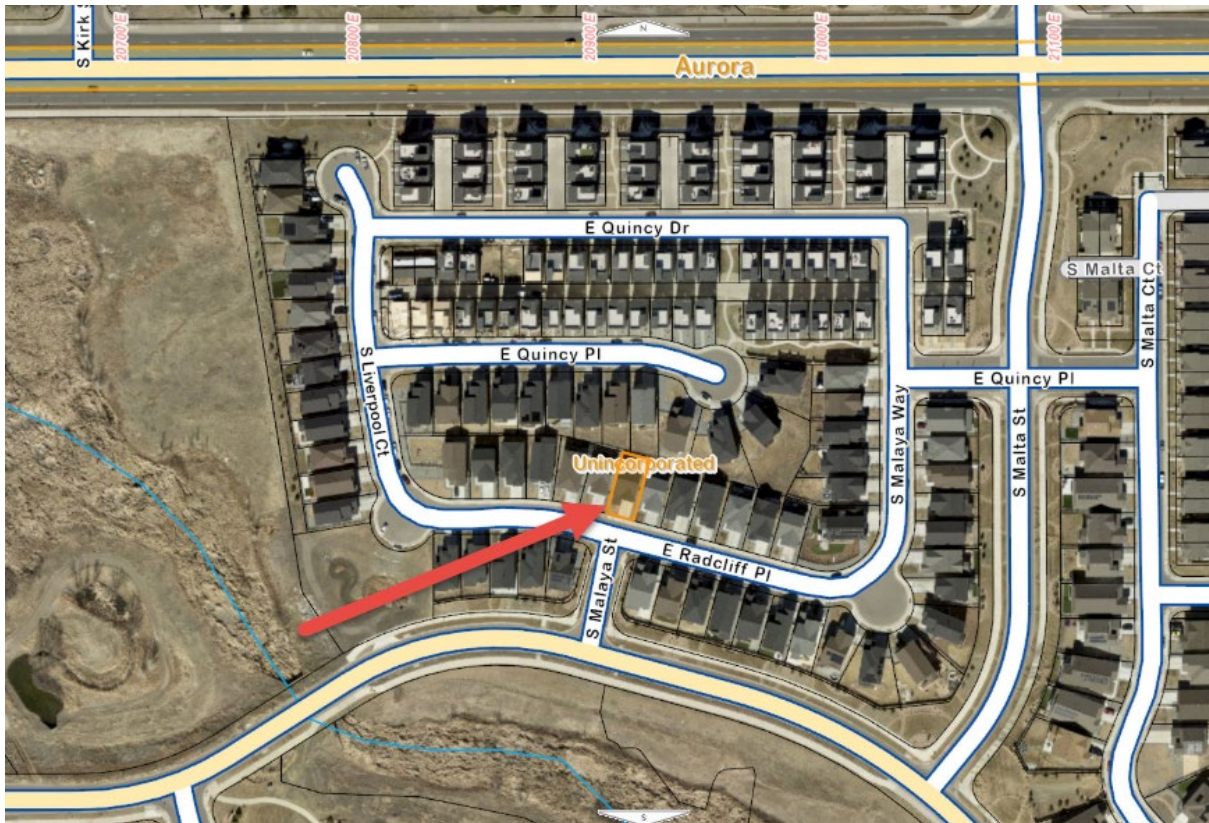
CASE NO. BOA-2024-00008; VARIANCE REQUEST TO ENCROACH INTO THE SIDE SETBACK

APPLICANT: JUSTIN LEE ROMERO

ZONING COMPLIANCE SPECIALIST: BRANT LOVE

LOCATION: The site is located at 21005 E. Radcliff Place in the Copperleaf Subdivision. The property is zoned MU (Mixed Use) and located within Election District 3.

Vicinity Map - (site is indicated by orange box)



ADJACENT SUBDIVISIONS, ZONING, AND LAND USES:

- North - MU (Residential/Single Family), existing fully developed subdivision
- South - MU (Residential/Single Family), existing fully developed subdivision
- East - MU (Residential/Single Family), existing fully developed subdivision
- West - MU (Residential/Single Family), existing fully developed subdivision

PROPOSAL:

The applicant, Justin Romero, is requesting a variance from the required 5-foot side setback along the western property line to allow a 3-foot encroachment. This is a 60% reduction in the setback resulting in expanded use to within 2-feet of the property line and 7-feet from the neighboring residence.

Within the proposed encroachment, the applicant intends to build a walkway and landing/staircase to create an additional side entrance to the home. This entrance would allow more direct access to the basement of the home by way of an internal staircase. The applicant has represented that this entrance will not serve as access to a separate accessory dwelling unit but is, instead, an entrance to be utilized by a roommate residing in the basement. The applicant has advised that their roommate has full access to and utilizes the main floor and kitchen area when needed. Accessory dwelling units require additional review and permitting and are not allowed without additional review. If the applicant wishes to build out the basement as an accessory dwelling unit, they have been informed of the building and zoning requirements to do so. As it stands, the basement may be utilized by a roommate but there cannot be a kitchen in the basement, nor can the basement resident be restricted from main floor access.

BACKGROUND:

The subject property is zoned MU (Mixed Use) which allows Urban Residential / Single-Family Detached and Attached development. The area consists of primarily residential development with a variety of housing types combined with non-residential secondary land uses that are complementary and supportive.

DISCUSSION

Staff review of this application has included an analysis of the proposal against the Land Development Code, General and Final Development Plans for the area, the Comprehensive Plan, and further considered, an analysis of referral comments.

1. Land Development Code, Development Plans Review, and Comprehensive Plan

A setback is the required minimum horizontal distance between the location of structures or uses and the related front, side, or rear lot line measured perpendicular to such lot line. A side setback extends the full length of the side lot line, measured perpendicular to the side lot line. The side setback typically overlaps the front or rear setbacks.

The property in question consists of .0830 acre (3,615.48 sq. ft). The side setback is 5 feet, meaning there is 5 feet between the home and the property line. The applicant proposes to encroach the side setback with the construction of a walkway and elevated side entrance to the single-family home. The elevated entrance would require a building permit. The resulting encroachment would measure 3 feet into the side setback.

Per the development plan, FDP19-001, the property in question is identified as lot #68. The designated side setback for this lot is 5 feet. The development plan includes other models and locations within the subdivision with possible side door entrances on the elevation drawings, but all proposed side door entrances are shown to be flush with the ground and not with a raised entrance. This means that the other entrances do not encroach into the setbacks.

The following approval criteria are identified in the Land Development Code for any variance application. Additionally, per code, the applicant is required to clearly demonstrate a hardship.

Analysis of approval criteria:

1. The strict application of these Regulations would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Regulations.

In their cover letter, the applicant advises they have a roommate residing in their basement. The applicant is requesting a variance to put a side entrance outside of the home, which would allow the roommate access to the basement directly at the staircase and without entering the main floor area. This would address the applicants' concerns regarding interruptions and the separate entrance would not be possible without a variance. The applicant has not identified any attributes of the property or the home that cause practical difficulties or unnecessary hardships that are inconsistent with the purpose and intent of the Land Development Code. The home already contains appropriately approved entrances in the same manner as those of the surrounding homes. The application of the Regulations has not caused a practical difficulty or unnecessary hardship.

2. Any variance shall not grant special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which the subject property is located.

In this matter, the applicant is in the same position as the many homes surrounding him. The variance sought would, in fact, provide a special privilege that is inconsistent with the other properties in the vicinity. All the properties in the vicinity are subject to the same side setback requirement. Those few homes with side entrances do not encroach this setback. The development plan, while identifying side doors associated with some of the model homes, does not create or infer variances or allow setback encroachments. Staff were unable to find other properties in the neighborhood that have been granted these same special privileges.

3. Because of special, applicable circumstances, including size, shape, topography, or location, the strict application of these Regulations will deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification; or that there are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood.

Staff is unaware of any applicable circumstances associated with the size, shape, topography, or location of the lot that creates a hardship on the applicant in this case. In fact, the "hardship" expressed by the homeowner is instead a personal preference, specifically, to not be disturbed by another party entering the residence. There are no circumstances associated with the size, shape, topography, or location of the lot that creates a hardship.

4. That the condition or situation for which the variance is sought is not of so general a nature that the formulation of regulations would be necessary to insure consistent application of the regulations.

The variance is sought from a general side setback, applicable not only to the particular residence in this development but also applicable to many other high density residential neighborhoods where verticality is emphasized to achieve higher density. Staff believes that given the multitude of similarly situated residential properties, both within this development and beyond this development, additional regulatory efforts will become necessary to ensure such variances requests do not become common. Staff is mindful that setbacks allow the quiet enjoyment of adjoining properties by prohibiting side activity.

5. That the granting of a variance will not be substantially detrimental to the public good and will not substantially impair the intent and purpose of these Regulations.

This criteria addresses the general impact of the requested variance with regard to the intent and purposes of the Regulations. Side setbacks exist, in part, to ensure the quiet enjoyment of adjoining property. Side setbacks discourage "side yard" use in communities such as the one at issue. This request would be substantially detrimental in that it could contribute to neighbor disputes related to additional side yard activity. Additional

concerns arise related to the drainage on the property, reliant on the specific construction details of the walkway and landing/staircase.

6. *That the granting of a variance will not be contrary to the objectives of the Arapahoe County Comprehensive Plan.*

The Comprehensive Plan designates this area for single family residential. Given that no change in land use is proposed, this request does not conflict with the Comprehensive Plan's objectives.

2. Referral Comments

Comments received as a result of the referral process are as follows:

Public Works and Development

1. Planning Division: No Comments/Concerns

2. Engineering Division:

1. It is unclear how much imperviousness area is proposed and what the slope of the concrete pad/walkway is.

2. need to know how the proposed stairs work (lead down to the basement?) If so, the drainage will be an issue.

3. Side grade should slope away from the house.

The applicant will need to provide a plan showing that the drainage pattern of the proposed work will follow the historical flow path prior to the building permit

3. Building Division:

If the request for the variance is to proceed, the Building Division would request that as a requirement of the variance, an approved Building Permit must be approved and issued. If the building permit cannot be issued due to code compliance issues, any variance should be retracted.

Public Health Department: No Comments/Concerns

Fire Department: No Comments/Concerns

As of the date of this report, no adjacent property owner or neighbors have contacted our office to express support or opposition to the variance request.

STAFF FINDINGS:

Staff have visited the site, reviewed the plans and supporting documentation, referral comments, as well as citizen input in response to this application. Based upon review of applicable policies and goals in the Land Development Code and analysis of referral comments, our findings include:

1. While a proposed side entrance is not outside of the final development plan's home architectural designs, staff have not been able to identify any supporting situations where a side entrance and staircase/landing have been built.
2. Staff finds that the criteria for a variance approval have not all been met for this application.

Attachments

Letter of Intent and Application

Staff Report

Final Development Plan, FDP 19-001

Pictures of Property

Referrals

Mailing list