

APPLICANT NAME: Steven T. McCain	VARIANCE ADDRESS/LEGAL DESCRIPTION: 231 Park Street / Lot 7 Amended Plat of Lyons 6,7,8,9,12 and 13, Block 20
NAME OF REVIEWER: Paul Glasgow	REPORT DATE: Jun 13, 2019
OWNERS NAME: Steven and Jarred Todd McCain	BOA MEETING DATE: June 18, 2019

ZONING DISTRICT AND STANDARD TO BE VARIED: Single Family Residential (R-1) (Sec. 16-3-260) (d) (4) b. Side yard - Total of both side yards shall not be less than fifteen (15) feet, with each side yard to be at least five (5) feet.

The Applicant requests variances from the side yard minimum setback of five (5) feet to zero (0) feet for the installation of a deck and stairs. Please note although the Applicant is requesting a zero-lot line setback, the site plan indicates the stairs and deck, the reason for the requested setback only requires a two (2) foot setback.

SUBJECT PROPERTY and BACKGROUND: The subject property has a modular home placed on foundation; construction started in 2017. The applicant inhabited prior to receiving a certificate of occupancy from the Town.

The Applicant applied for and received a flood development permit for the home as the home is in the 100-year floodplain. The best available data (the soon to be adopted floodplain maps). That floodplain application also did not include the deck or stairs on the west side of the building.

In April of 2017 the Board of Adjustments heard and approved a variance to the front yard setback of the property, but the Applicant did not apply for or receive a variance on the west side of the property. The application exhibits showed the modular home situated on the side yard setback, but it did not have stairs or deck identified on the west side of the modular home.

On 1/30/2019 the Town issues a Notice of Violation after discovering that the stairs were built in the setback, without a floodplain permit and the home was occupied without the building official issuing a Certificate of Occupancy.

The Applicant is seeking approval of the variance set for in the application to accommodate a deck and stairs built within the side-yard setback. If the variance is not approved, the applicant would be required to remove the stairs and deck and eliminate the side egress from the home.

The applicant indicated that the stairs and deck are required for the applicant to receive a certificate of occupancy from the Lyons Regional Fire District. Staff also received a referral letter stating that was the case, but when Staff consulted with the Building Official, the Building Official indicated that only one door is needed for egress. Staff followed up with the Lyons Regional Fire District and they confirmed that removing the western egress, if approved by the Town's building department, would not prevent a certificate of occupancy.

RECOMMENDATION: Staff finds the construction of the deck and stairs violates Section 16-14-70 (a) (d) and Section 16-14-70 (b) (1), (2), (3), (4) and (5) therefore the application does not achieve the variance approval criteria. Staff cannot recommend approval of the variance. **Recommendation is DENIAL.**

Sec. 16-14-70. - Variance criteria for approval		
CRITERION	HAS CRITERION BEEN MET?	FINDINGS
The following need to be met for the Board of Adjustments to approve a variance:		
A. Land use is allowed in zoning district.	AFFIRMATIVE	The entire subject property is single family Residential (R-1). Sec. 16-3-150 of the Lyons Municipal Code (LMC) sets forth that the intent of the R-1 zone district is a low-density housing district intended primarily for single-family uses on individual lots.
B. Variance is not in the public right-of-way or on public property.	AFFIRMATIVE	The variance does not affect the public right-of-way.
C. Variance will not alter any definition of Chapter 16 of the LMC (the <i>Lyons Zoning Regulations</i>).	AFFIRMATIVE	No definition of the <i>Lyons Zoning Regulations</i> will be altered by the granting of the proposed variance.
D. Variance is the minimum variance that will afford relief with the least modification possible to the requirements of the <i>Lyons Zoning Regulations</i> .	NEGATIVE	The stairs and deck are already constructed but the site plan indicates they are two (2) feet from the property line, so the variance requested is not the minimum that will afford relief. If the Board of Adjustments chooses to approve the variance, Staff recommends that the
E. Variance is based on physical conditions or circumstances unique or peculiar to the property. Variance is not based on physical conditions or circumstances of the property that are of a general or recurring in nature so as to reasonably make practicable the formulation of a general regulation to be adopted as an amendment to the <i>Lyons Zoning Regulations</i> .	AFFIRMATIVE	The property is flat.
F. Variance is <i>not</i> based exclusively on findings of personal or financial hardship. Convenience, profit or caprice shall not constitute undue hardship.	AFFIRMATIVE	

IN ORDER TO GRANT A VARIANCE, THE BOARD OF ADJUSTMENTS SHALL FIND THAT ALL THE FOLLOWING HAVE BEEN SATISFIED:

CRITERION	HAS CRITERION BEEN MET?	FINDINGS:
1) That there are unique physical circumstances or conditions, such as irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical condition particular to the affected property.	NEGATIVE	Although there are floodway issues on the site, those did not create the side setback issue.
2) That, because of these unique physical circumstances or conditions, the property cannot be reasonably developed or used in compliance with the provisions of this Chapter.	NEGATIVE	As set forth and documented in the applicant's application materials, the primary reason for the variance request is that the Applicant placed the modular too close to the property line, other building types or building placement could have been considered when planning the site.
3) That, due to such unique physical circumstances or conditions, the strict application of this Chapter would create a demonstrated hardship.	NEGATIVE	The lot is buildable.
4) That the demonstrable hardship is not self-imposed.	NEGATIVE	The original site planning and front yard variance approved in 2017 did not indicate or request the variance for the west stairs and deck. The deck and stairs were constructed without a building permit or a floodplain permit.
5) That the variance, if granted, will not adversely affect the proposed development or use of adjacent property or neighborhood.	NEGATIVE	The variance is within the setback and the adjacent property structure near the deck and stairs.
6) That the variance, if granted, will not change the character of the zoning district in which the property is located.	AFFIRMATIVE	
7) That the variance, if granted, is in keeping with the intent of this Code.	AFFIRMATIVE	
8) That the variance, if granted, will not adversely affect the health,	AFFIRMATIVE	

IN ORDER TO GRANT A VARIANCE, THE BOARD OF ADJUSTMENTS SHALL FIND THAT ALL THE FOLLOWING HAVE BEEN SATISFIED:

CRITERION	HAS CRITERION BEEN MET?	FINDINGS:
safety or welfare of the citizens of Town.		

Alternatives

As this is a quasi-judicial action the Board has the following alternatives

- 1) Approve the variance as submitted in the application with or without conditions
- 2) Approve the variance as amended by the Board of Adjustments with or without conditions
- 3) Deny the variance application
- 4) Continue the public hearing for additional information

Attachments:

- 1. Application Packet
- 2. Lyons Fire Protection District Letter
- 3. Letter from the desk of Dan Siddall
- 4. Resolution 2019-01 DENYING variance
- 5. Resolution 2019-01 GRANTING variance