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**Board of Adjustment  
August 14, 2018  
Staff Report**

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**Application Summary –**

A request by Caleb Colbert (attorney), on behalf of Bobbie Jo Brown and Patrick Enterprises, LLC (owners), to grant a variance to permit 5 parking spaces to be located within the required front yard setback and permit more than 30% of the required front yard to be paved on property addressed as 402 and 404 McBaine Avenue which is not permitted per Sections 29-4.3(a)(3)(ii) and 29-4.3(f)(1)(v) of the Unified Development Code.

**Site Characteristics**

This application involves the current site of Nanny's Neighborhood Childcare Center (404 McBaine) and the property located at 402 McBaine which is currently improved with a single-family home proposed to be razed and redeveloped with an approximate 2,900 square foot building expansion. 404 McBaine is also improved with a 6-space parking lot and circular drop-off/pick-up lane which meets current regulatory standards for a family day center per the Unified Development Code (UDC). 402 McBaine is accessed by a share driveway between it and 400 McBaine.

The proposed redevelopment site plan (attached) shows the 2,900 square foot addition and a reconfigured parking lot designed to meet the parking requirements of the enlarged daycare facility. A total of 9 parking spaces with a drop-off/pick-up lane is required to meet current UDC requirements. The site plan shows a total of 10 spaces being provided with the required drop-off/pick-up lane. The existing shared driveway between 400 and 402 McBaine would be retained and become the sole access to 400 McBaine.

The subject properties are located within the R-MF zoning district and surrounding by other R-MF zoned properties improved with single and multi-family structures. The proposed expansion of the existing daycare is a permitted use within the R-MF district and based upon the submitted site plan appears to conform to all required setback requirements.

Access to 404 McBaine is currently provided by two (2) curb cuts. Access to 402 McBaine is provided by a single curb cut. As can be seen on the attached redevelopment plan one of the curb cuts to 404 McBaine is to be closed and a new curb cut to access 402 McBaine will be installed. This proposed modification affords better on-site circulation and creates opportunities to increase on-street parking spaces adjacent to the subject parcels.

**Relief Sought and Purpose**

The applicant is seeking authorization to have parking located within the front yard setback of the properties and to have more than 30% of the required front yard of the properties paved. Section 29-4.3(a)(3)(ii) of the UDC prohibits parking within the a required front yard. Section 29-4.3(f)(1)(v) prohibits more than 30% or 500 square feet, whichever is greater, of paved area to cover a required front or rear yard.

The applicant indicates that the requested variances are necessary to preserve the original design of the building which has parent drop-off/pick-up in the front of the building and direct classroom access to the existing and future playground space in the rear of the building. The applicant further states that preserving this current design provides a safer environment for the facility as well as reduces the amount of pavement required on the site. Approval of the requested variance would permit the conditions present on the 404 McBaine parcel to be extended to 402 McBaine parcel.

## **Variance Analysis –**

### Summary and Impacts –

The applicant is seeking a variance from the following regulatory requirement of the Unified Development Code:

1. **Section 29-4.3(a)(3)(ii)**– Permission to construction parking spaces within the required front yard setback of an R-MF zoned property.

The subject parcels are both zoned R-MF. Pursuant to the former zoning requirements as well as existing UDC standards parking within the required front yard was not and is not permitted in any residential district, except for one and two-family structures when tandem parking is utilized.

At the time of permit issuance for 404 McBaine, parking was permitted to be located within the required front-yard setback and the structure was legally issued a certificate of occupancy. As such, the parking as it exists is considered legal non-conforming. Such parking, while encroaching into the required front yard, did meet the then required parking lot landscaping standards from a public right of way which required a 6-foot wide landscape strip. The requested variance will accommodate the relocation of the southern three (3) parking spaces on this parcel such that they will become parallel with McBaine Avenue and be fully located within the required front yard setback. The existing 6-foot wide parking lot landscape strip will be extended southward and “fill-in” the current curb drop serving 404 McBaine.

The structure currently located at 402 McBaine is a single-family home that utilizes a shared driveway as its access and for parking. From aerial photography and site inspection, it would appear that the parking provided for this parcel is in a legally permitting “tandem” configuration which permits one vehicle to be located in the required front yard setback.

The provision to restrict placement of parking within the required front yard setback of residential zoning districts was to ensure a minimum amount of green space was retained between the property line and a proposed residential or non-residential structure placed at the minimum building setback. This restriction prevents vehicles from potentially blocking public sidewalks or rights of way by requiring that driveways extend deep enough into a lot such that a vehicle is entirely located upon private property. Furthermore, the restriction helps to promote neighborhood aesthetics as well as encourages walkability.

Should the requested variance be granted, based upon the submitted redevelopment site plan, there would be a total of 5 parking spaces completely and 1 space partially within the required setback of the

subject parcels. Presently a total of 4 spaces are completely and 2 spaces are partially within the required setback. Due to the existing daycare's location and its associated playground areas there is limited ability to place the non-compliant parking elsewhere on the site such that this variance would not be necessary.

The need for this variance is driven more by the reconfiguration of the parking area on the existing day care center parcel (404 McBaine) rather than the need to accommodate the 4 additional spaces generated by the building addition. The additional 4 parking spaces required for the building addition are actually located fully outside of the required front yard setback.

A potential alternative location for the parking would require movement of the building addition forward on the parcel addressed as 402 McBaine at which point it may be possible to have a 3 of the five non-compliant spaces plus the required 4 additional spaces located behind the building addition. It should be noted that such site alteration would significantly limit usage of the rear yard of the property for an expanded playground. Furthermore, it would result in the building additional being placed forward of the existing structure on the site as well as compromise the proposed circulation pattern.

Given the site's size and existing developed conditions and the fact that moving a portion of the non-compliant parking to the rear of the building addition does not fully address the necessity for the requested variance, it is staff's belief that the proposed redevelopment site plan offers the best parking space configuration. This configuration, while not compliant with the strict application of the UDC's standards, affords the site with a safe and efficient circulation pattern as well as yields 1 additional on-site parking space more than required by Code. Furthermore, the parking configuration shown will ensure that parking and children's play spaces are physically separated by structural improvements and the front building wall is in line or behind the primary day care structure which is consistent with other structures on the block.

2. **Section 29-4.3(f)(1)(v)**– Permission to occupy more than 30% or 500 square feet of the required front yard setback with paving.

With the adoption of the Unified Development Code a new provision was created that limits the amount of paved area permitted within the required front yard or rear yard setback area of a residential lot. This provision was created to reduce unnecessary paving of with the yard areas as a means of enhance neighborhood aesthetics as well as encouraging walkability. The provision also reduces the likelihood of having vehicles located within or blocking sidewalks or public right of way when the paved area is in the front yard.

The proposed redevelopment site plan shows that approximately 2,880 square feet of paved area will be located within the required front yard setback following site redevelopment. The maximum amount of paved area permitted is 1,137 square feet. Given that the primary improvement on the parcels, the existing day care, was permitted prior to adoption of the new paving limitation it is not unexpected that the coverage of the required front yard exceeds that allowed by the UDC.

It should be noted that in all non-residential zoning districts there is no limitation upon the amount of paving allowed within the required front yard setback. Rather, in non-residential zoning districts paving shall not be closer than 6-feet to the property line unless it is screened and buffered in accordance with the landscaping and screening standards provided for in Section 29-4.4 of the UDC. As noted in Variance item #1, above, the existing parking lot on the 404 McBaine parcel was install with a 6-foot wide landscape strip. The proposed redevelopment site plan shows this same landscaping and buffer strip being provided along the entire frontage of the redeveloped site. Such improvement maintains consistency with what has been previously allowed and is in compliance with the requirements of Section 29-4.4 of the UDC as it would pertain to a non-residentially zoned parcel with a similar parking lot.

The proposed use, while in a residential zoning district, operates in a manner similar to an office or low-intensity commercial business. The use would be considered a “commercial” day care as it is not restricted on the total number of children it may serve. Given the use’s similarity to other more intense non-residential uses and the fact that the redevelopment site plan shown installation of a 6-foot wide landscape and buffer strip it is staff’s finding the amount of paving proposed in the required front yard, while not in compliance with the UDC provisions for an R-MF zoned property, is not any greater than that which would be found on a non-residentially zoned parcel.

It should be further noted that to remove the parking spaces and drive isles out of the required front yard setback such that compliance would be achieved is not practical given the existing level of current and proposed site improvements. To do so would create a less efficient and less safe traffic circulation pattern on the site and compromise the safety of the facilities users. Allow the site to be improved as shown on the redevelopment site plan is consistent with the existing usage of the property and will have limited additional impact upon the surrounding properties or neighborhood.

Compliance with Variance Criteria -

Staff has reviewed the “General Criteria” for the approval of a variance as articulated in Section 29-6.4(d)(3)(i) of the UDC. In relation to these criteria, staff finds that:

1. The subject parcels were developed in accordance with the zoning standards that previously existed prior to the adoption of the UDC. As a result, the parking and paved surfaces within the required front yard of the subject parcels are considered legal non-conformities. Improvements to parcels that have non-conforming site features such as parking, landscaping, and lighting may be made provided such improvements do not increase the level of non-conformity relating to those site features. It is staff’s finding that while there is relocation of certain non-compliant site features the level of overall site non-compliance has been minimized and is generally attributed to improvements in overall site circulation. Furthermore, the site is being brought into greater compliance by the addition of landscaping and buffering along the parcel’s McBaine Avenue frontage.
2. Approval of the requested variance would not result in permitting the construction of a building not otherwise allowed in the R-MF (Multiple-Family Dwelling) district or modify a standard contained with the definition of “Family Day Care Center”.

3. Approval of the requested variance would not result in permitting development inconsistent with the Comprehensive Plan. The subject site is located within a “Neighborhood” district and the proposed use is consistent with that designation. This is an established day care center within one of the City’s Strategic Plan Areas which is offering necessary services to the surrounding community. Staff finds that expansion of the facility would be a benefit to local residents.
4. The proposed variance is the least change from the requirements to address the applicant’s hardship given the site’s location and already developed characteristics. While alternatives exist that potentially would accommodate a majority of the redeveloped site’s parking to the rear of the proposed addition such location will not negate the need for the requested variances. Furthermore, such site modifications would reduce the site’s overall circulation pattern as well as increase potential conflicts between pedestrians and vehicles using the site.
5. Given the context in which the subject property is located, the placement of the parking to the front of the existing and proposed addition is in the best interest of the public and public safety. The proposed layout maintains continuity between the existing developed portion of the site and the future expansion area, will ensure a consistent street frontage appearance, and accommodates maximum on-site parking. Furthermore, the proposed redevelopment will eliminate one existing curb drop and elongate the drop-off/ pick-up lane serving the facility thereby reducing on-street congestion during peak hours of operation and permitting the potential addition of one or more on-street parking spaces to be created.

#### **Recommendation Action –**

##### **Approval of the request variances as follows:**

1. **Approval of a variance to Section 29-4.3(a)(3)(ii)** to allow a maximum of six (6) vehicle parking stalls to be located within the required front yard setback of 402 and 404 McBaine Avenue as depicted on redevelopment site plan revised 7/2/18.
2. **Approval of a variance to Section 29-4.3(f)(1)(v)** to allow a maximum of 2,900 square feet of impervious surface (i.e. paving) to occupy the required front yard of 402 and 404 McBaine Avenue as depicted on redevelopment site plan revised 7/2/18.

It should be noted that the above recommendations for the approval of the requested variances are subject to the applicant’s compliance with:

1. The landscaping and screening standards contained within Section 29-4.4 of the Unified Development Code; and
2. Submission of a replat to consolidate the subject parcels into a single development lot pursuant to Sections 29-5.1(f)(3) and 29-5.2(d) of the Unified Development Code.