
**Board of Adjustment
June 11, 2024
Staff Report**

Application Summary –

A request of Michael Imhoff (agent), on behalf of Tracy Buesing (owner), seeking approval of a 5-foot variance to allow the encroachment of a paved parking space into the required 6-foot side yard on property addressed as 1309 West Worley Street which is not permitted per sec. 29-4.1(c)(2), Table 4.1-5 and sec. 29-4.3(g) of the Unified Development Code.

Site Characteristics

The subject site is located at 1309 West Worley Street approximately 100 feet east of its intersection with Pennant Street. The property is zoned R-1 (Single-family Dwelling) and improved with a single-family dwelling that was recently remodeled. As a part of the remodeling activities a new driveway was installed that included a parking space/driveway extension to allow an additional vehicle to park on-site that would not block the garage approach. This additional parking space/driveway extension was not identified on the original plot plan that was presented to the City's Building Department at the time of permit issuance. It is important to note that "flatwork" associated with on-site parking spaces or patios does not require a permit before it can be constructed; however, a permit for the driveway approach that connects the driveway to the public street does. The currently installed driveway approach meets the City's regulatory requirements and is consistent in its location as shown on the submitted plot plan as part of the initial permit processing.

The subject property is surrounded by single-family housing in all directions with the exception of CMCA's Head Start Center to the southwest. Properties to the north, east, and west are zoned R-1 and property to the south is zoned R-2 (Two-family Dwelling); however, is generally developed with single-family detached housing units. West Worley Street is the physical demarcation line between these zoning classifications and is classified as a "major collector" street upon the City's Major Roadway Plan. This classification of street is intended to carry traffic volumes ranging from 3,500 to 8,500 average daily trips (ADT), have between 32-44 feet of pavement width, not permit parking on either side, and not allow direct driveway access to single- or two-family uses.

As can be observed from aerial photography or a physical site visit, West Worley is non-compliant with many of these design attributes. Principally, on-street parking occurs along sections of the roadway and there is direct single- and two-family driveway access. These features are a result of the pre-existing development patterns within the corridor. While not ideal, the movement of traffic along the corridor is not significantly impacted; however, wherever possible eliminating these conflicts is a preferred outcome.

Additionally, the subject property is elevated from the travel lanes of West Worley approximately 4-feet. Per the attached applicant correspondence, one of the residents of the recently remodeled home is mobility impaired. As a result of this impairment and the desire to remove on-street parking from West Worley, the homeowner requested that their contractor pour the parking space/driveway extension. The contractor was unaware of the setback provisions regarding the additional parking space from the adjacent property line which were created as part of the 2017 adoption of the UDC. Given no permit was required for the additional flatwork, the violation of the UDC's standards was not discovered until the remodeling improvements were undergoing their final inspection prior to issuance of the required Certificate of Occupancy for the remodeled dwelling.

Relief Sought and Purpose

The applicant is seeking a variance to allow an on-site parking space/driveway extension to encroach into the required side yard setback of the subject property by 5-feet. The R-1 zoning district requires a minimum 6-foot side yard setback into which no structures may be constructed. Section 29-4.1(c)(2), Table 4.1-5 [Yard Area Exceptions] permits a **driveway** to be within 5-feet of a property line; however, sec. 29-4.3(g)(1) indicates that no **parking** shall be within 6-feet of an adjoining lot containing a single- or two-family use. As noted above, the subject property is adjoining another lot improved with a single-family dwelling. As such, the parking space that has been added, which is on an approved **driveway** must maintain a minimum 6-foot setback. As presently constructed the driveway is located 1-foot from the adjacent property line; therefore, the need for the requested 5-foot variance.

The purpose of the variance is to ensure that there is regulatory compliance with the aforementioned code requirements. Based on the provisions of the UDC, it could be argued that a variance of only 4-feet is necessary given the parking space is part of a permitted driveway which is allowed to be within 5-feet of a property line. Staff; however, in the abundance of caution has determined that the more restrictive provision of the code (i.e. no parking within 6-feet of single- or two-family use) applies in this instance. Hence the following analysis is based upon the need for a 5-foot variance to ensure regulatory compliance with the provisions of sec. 29-4.3(g)(1).

Variance Analysis –

Summary and Impacts –

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

Parking Design Standards - Section 29-4.3(g)(1)

The applicant is seeking approval to allow a parking space that is attached to a driveway to encroach 5-feet into the required side yard of an R-1 zoned property which abuts another property improved with a single-family dwelling. The provisions of sec. 29-4.3(g)(1) were adopted as part of the City's overall zoning and subdivision code rewrite that was approved in 2017. Prior to this time, there was no specific prohibition on the location of a parking space within a required side yard setback or within proximity to a single- or two-family dwelling.

The agent for this application, the owner's contractor, was unaware of the new regulatory provision at the time of initial site plan submission for the proposed renovation of the home at 1309 West Worley. Furthermore, "flatwork" related to driveway, patio, or sidewalk construction does not require a permit from the City; however, such features are evaluated, when shown on a plot plan, prior to the issuance of a building permit to ensure that such work does comply with the UDC's standards. The parking space/driveway expansion occurred post-permit issuance at the request of the property owner to address a mobility impairment of a family member that would be living within the dwelling. Given no permit was required for this work, there was no pre-evaluation relating to its compliance with the UDC prior to its installation. At the time of final inspection, the non-compliance of the site improvement was discovered.

If the variance is approved, it would result in a parking space/driveway expansion to be within 1-foot of the adjoining property line. This encroachment, based upon the correspondence submitted by the adjacent property owner and the dwelling's tenant, is not considered objectionable. While such approval would not be code compliant, it would permit better access to/from a vehicle parked in the

dwelling's driveway without blocking other vehicles access to the attached garage and would reduce possible conflicts (vehicle and pedestrian) along West Worley which, by its classification, is not to have parking within the public right of way.

If the variance is denied, the property owner would be required to remove 5-feet of the parking space/driveway such that a 6-foot separation were maintained from the property line. Such an alteration would render the additional parking space, as installed, non-functional as parking on the remaining concrete would block access to the attached garage. A compliant extension of the driveway to accommodate functional parking could be constructed along the east side of the driveway that would extend into the center of lot. Such installation would ensure safe passage to/from a vehicle parked in the dwelling's driveway without blocking other vehicles use of the attached garage and would reduce possible conflicts along West Worley. This type of installation is not common along the West Worley corridor.

It should also be noted that per the parking standards of the UDC, "tandem parking" is permitted on any R-1 or R-2 zoned lot. If such parking strategy were employed the objective of having parking off-street from West Worley could be achieved; however, given the grade of the property the slope of the driveway may create challenges for its safe usage by a mobility impaired individual. Furthermore, the use of tandem parking reduces the overall functionality of the existing site improvements given access to the dwelling's attached garage is significantly inconvenienced.

Finally, if the requested variance is granted it will "run with the land" in perpetuity. This means that future property transfers would benefit from the current non-compliant installation and that maintenance, not expansion or replacement, of the improvements can occur. Furthermore, the potential long-term benefit of not have cars parked along West Worley will be permanently secured.

Compliance with Variance Criteria -

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

- A. The requested variance has been filed to address a locational hardship as well as one related to terrain of the property (i.e. its elevation above West Worley) and its impact upon the future users of the site. As noted, the roadway classification of West Worley specifically prohibits the on-street parking to ensure public safety. On-street parking is permitted as a result of the historical development patterns along the corridor which if prohibited may potentially negatively impact adjacent properties unfairly. Furthermore, the elevation of the site above the travel lanes of West Worley and the resulting driveway slope is considered a potential safety issues for an individual with mobility impairment. The location of the existing non-compliant parking space/driveway extension is on an elevation that is equal to that of the sidewalk approach into the dwelling. There are no stairs or other impediments to block safe passage to and from a parked vehicle within the parking space/driveway extension. Parking in tandem in the permitted driveway would be on a slope that may introduce conditions less safe for a mobility impaired individual forcing parking on the flatter terrain of West Worley which then increases public safety risks and further perpetuates non-compliance with West Worley's street classification.
- B. On-site parking is considered a "customary, accessory use" to any single- or two-family dwelling. The location of this land use is what is in question, not the use itself. The property owner's agent was unfortunately not fully aware of the revised regulatory standards relating to parking spaces and driveway placement. Approval of this variance would not result in allowing a use not permitted in the zoning district, but would provide relief with respect to where that use is located on the lot.

- C. The Comprehensive Plan does not specifically address the issue of parking; however, it does address the issue of creating “Livable and Sustainable Neighborhoods”. The installation of off-street parking can be considered an element that promotes creating a “livable” neighborhood by reducing congestion on adjacent public streets which in turn result in greater levels of public safety. However, at the same time, the installation of additional paving on private residential lots can be view as being less sustainable given existing improvements such as driveways and public streets can accommodate supplemental vehicle parking.

In this particular instance, West Worley’s roadway classification does not support on-street parking. Furthermore, given the elevation of the property above the travel lanes of West Worley, the site’s shallow front yard and its impact upon the slope of a driveway, and the fact the dwelling has an attached garage, the use of single vehicle wide driveway for tandem parking becomes less desirable. Add to these considerations, that the user of the property has a mobility impairment which requires a less steep driveway condition for safe access to the site’s improvements. Taking all these factors into account, it is possible that the requested relief may be reasonable to ensure that the city’s regulations are not creating barriers to allowing a “livable neighborhood” to be created for this applicant or others that may purchase the home in the future.

- D. Approval of the requested variance would be the least change necessary to accommodate the desired parking space/driveway extension.
- E. Approval of the requested variance will not harm the public health, safety, or welfare. In fact, approval would likely positively impact all three aspects given parking along a high-volume east-west collector would be removed, at this location, as well as the associated conflicts with pedestrians. As for approval being injurious to adjacent property or improvements within area, as the attached correspondence illustrates, the immediately impacted property owner and tenant are in support of the requested variance.

Recommendation Action –

If the Board finds that compelling testimony has been given, a recommendation of approval would be appropriate. Conversely, if the Board does not believe compelling testimony has been provided a recommendation of denial would be appropriate. In either instance, **for the purposes of establishing a “complete” public record**, Board justification supporting the variance or denial of the variance in accordance with the criteria defined in sec. 29-6.4(d)(3)(i)(A-E) shall be stated within the public record prior to a final decision being rendered.