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**Board of Adjustment  
February 10, 2025  
Staff Report**

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**Application Summary –**

A request of David Borgelt (owner) seeking relief from the provisions of Sec. 29-4, Table 4.1-5 and Sec. 29-4.3(g)(1) of the Unified Development Code relating to the placement and extension of a “shared” driveway between 210 and 300 Edgewood Avenue and the location of existing and future vehicle parking in proximity to a property line. If relief is granted, the existing “shared” driveway would be considered lawfully compliant in its current location and authorized to extended approximately 84-foot eastward within 5-feet of the existing shared property line. Additionally, if relief is granted parking within 6-feet of a lot improved with a single- or two-family use would be authorized. This request is being considered concurrently with Case # 62-2026 which seeks similar relief be granted upon property addressed as 300 Edgewood Avenue, to the south. The requested relief upon both the subject lot and property to the south has been triggered by the applicant desiring to construct a UDC code-compliant detached garage in the rear yard of 210 Edgewood Avenue.

*Site Characteristics*

The subject site is a 50 x 164-foot R-1 (Single-family Dwelling) lot that was created in October 1922 as part of the Park Hill Addition No. 3 subdivision (Lot 121). The lot is improved with a detached single-family dwelling and shares a driveway with the adjacent property to the south at 300 Edgewood Avenue (Lot 122) of Park Hill Addition No. 3. An easement over the existing 11.5-foot x 80-foot shared driveway was recorded in May 1991 to ensure access rights to each adjacent property owner were formally established. 5-feet of the shared driveway extends onto Lot 121 (the subject site) and 6.5-feet extends onto Lot 122 (300 Edgewood) from the shared property line of the parcels. The dwellings constructed on each lot are approximately 25-feet apart from one another.

To ensure that regulatory compliance is secured for both 210 and 300 Edgewood Avenue a concurrent requested seeking relief from the same code provisions has been submitted specifically for 300 Edgewood Avenue. This request (Case # 62-2026) appears under separate cover on the Board’s February 10, 2026 agenda. While integrally related, the Board must take action on each case separately.

Not unlike most development along Edgewood, neither dwelling presently has a garage along its street frontage to support on-site/off-street parking. Many dwellings along Edgewood share driveway access and in some instances have detached garages that are either fully within the individual lot or were built across a shared lot line. This application has been submitted in advance of pursuing a building permit to construct a detached garage in their rear yard of the subject lot. Such future construction requires the extension of the existing “shared” driveway between the parcels. Without relief from the two UDC provisions being granted concurrently to both the subject lot and the lot to the south, the applicant will be unable to obtain the desired building permit given a legally compliant driveway access to the rear of 210 Edgewood cannot be obtained in any other location upon the subject lot.

The relief sought for the subject lot would legalize the current existing “shared” driveway location to remain within 5-feet of the shared lot line of 210 and 300 Edgewood and permit a future 84-foot easterly driveway extension along the southern boundary of the subject lot. Additionally, relief is sought to allow vehicle parking within 6-feet of a lot being improved with a single- or two-family use (i.e. 300 Edgewood). The restrictions from which relief are sought were adopted in 2017 in efforts to facilitate “Neighborhood Protection Standards” with the intent to address the impacts created by driveway

placement and vehicle parking upon lots undergoing redevelopment. Prior to 2017, there were no standards restricting driveway or parking placement on a lot; however, there were requirements that mandated driveway “flares” be no closer than 5-feet from adjacent property lines. It should be noted that the current improvements are considered legally non-conforming and could remain in perpetuity; however, no future site improvements would be permitted on either the subject lot or the lot to the south.

If relief is granted, the existing “shared” driveway and the necessary future eastward extension of the driveway upon the subject lot would be authorized to be within 5-feet of the shared property line. Additionally, parking within 6-feet of a lot improved with a single- or two-family use would be authorized. These authorizations will “run with the land” in perpetuity.

It is worth noting that the property to the north of the subject site has been improved in a similar manner as well as several properties along the western frontage of Edgewood. These improvements occurred prior to adoption of the UDC in 2017 and implementation of the current regulatory standards. If relief is granted the improvements to be constructed would result in conditions no different than what already exists within the surrounding neighborhood.

### Relief Sought and Purpose

The applicant is seeking relief from the UDC’s provisions that restrict a driveway to be located within 5-feet of an adjacent property line and the restriction that parking cannot be closer than 6-feet to a lot improved with a single- or two-family use. The subject lot shares an 11.5-foot x 80-foot “shared” driveway straddling its southern property line with the adjacent lot (300 Edgewood) that has existed for over 100 years. An easement over the existing “shared” driveway establishing access/parking rights between the owners was formally recorded in 1991.

At this time, the applicant desires to obtain a permit to construct a detached garage within the rear yard of the subject lot. To do so, it is necessary to extend their portion (5-feet) of the existing “shared” driveway eastward approximately 84-feet (the remaining depth of the subject lot) to their eastern property line as well as be allowed to park within 6-feet of the adjacent lot which is improved with a single-family use. A concurrent application (Case # 62-2026) seeking similar relief for property to the south (300 Edgewood) has been submitted and will be heard by the Board at its February 10, 2026 meeting. Submission of this concurrent application was required to ensure full regulatory compliance with given the “shared” nature of the existing driveway and inability to obtain full regulatory compliance on either lot individually, both the applicant and adjacent property owner must be granted relief from the UDC restrictions concurrently.

The subject lot, given its platted lot width (50-feet), location of the existing dwelling, and grade-related issues moving eastward on the lot present practical limitations on the applicant’s ability to install a code-compliant driveway serving his rear yard. Approval of the requested relief would legalize the present location of the existing “shared” driveway, authorize its future extension eastward 84-feet, and address the reality that parking within the existing and extended driveway will occur within 6-feet of an adjacent lot improved with a single- or two-family use. Furthermore, approval of the requested relief would address possible parking deficiencies between the subject lot and its neighbor to the north as well as address possible on-street parking concerns within the overall neighborhood.

Such actions would not result in future improvements upon the subject lot considered inconsistent with the existing built environment. Rather such actions would address existing regulatory non-compliance not created by the applicant as well as create a path forward that allows the applicant to secure the needed driveway width, subject to approval of similar relief for 300 Edgewood, to access to the subject

lot's rear yard which would then be improved with an on-site driveway and maneuvering area needed to support the desire detached garage.

## **Variance Analysis –**

### Summary and Impacts –

The applicant is seeking relief from the following requirements of the Unified Development Code:

#### **Exceptions and Encroachments - Section 29-4.1(c)(2), Table 4.1-5 [Yard Area]**

#### **Location and Use of Parking Facilities - Section 29-4.3(g)(1) [Parking Design Standards]**

The applicant is seeking relief to legalize the location of an existing “shared” driveway and its future extension approximately 84-foot eastward along the southern property line of the subject lot such that access to a future detached garage in the rear yard can be facilitated. Such actions would result in the existing “shared” driveway and its future extension being within 5-feet of a property line. Additionally, the applicant is seeking relief to be permitted to have parking within 6-feet of an adjacent lot improved with a single- or two-family use.

The adjacent lot to the south, 300 Edgewood Avenue, has submitted an application (Case # 62-2026) for Board consideration concurrently with this request. Given the “shared” nature of the existing driveway, both the applicant and adjacent property owner must secure approval of the requested relief prior to the owner of 210 Edgewood being able obtain a building permit.

The provisions regulating the placement of driveways with respect to property lines and the proximity of vehicle parking between lots improved with single- and two-family uses were adopted as part of the 2017 UDC and were tied to broader objectives of implementing “Neighborhood Protection Standards”. Prior to 2017, there were no specific standards governed driveway placement adjacent to property lines or parking on lots improved with particular land uses; however, driveway flares and/or wings were required to be located no closer than 5-feet to a property line.

If the requested relief is granted, the 100-year old existing “shared” driveway would become legally compliant and the applicant would be permitted the ability to install a new driveway extension on the subject lot approximately 84-feet eastward from its current terminus within 5-feet of the property line. The applicant's submitted correspondence indicates that a minimum extension of 25-feet of the existing “shared” driveway is necessary to ensure sufficient “shared” driveway depth has been constructed to access the rear of the subject lot. Once past this point, as illustrated on the attached site graphics, the applicant would construct a new driveway fully within the boundaries of subject lot to access the future detached garage. Given the lot width, the new driveway upon the subject lot will be required to be placed at the property line; therefore, relief from the required 5-foot setback is sought.

At this time, there has been no indication that the existing “shared” driveway would be further extended by the property owner of 300 Edgewood beyond the minimally required 25-feet to gain entry into the rear yard of the subject site. However, if the requested relief for 300 Edgewood is approved as submitted and shown in Case # 62-2026 such future extension would be authorized. The effect of this possible extension would be no different than what is presently occurring on the subject lot and the lot to the south. Furthermore, given the existing plans for construction on the subject lot and the need to obtain concurrent relief, staff believes the requests are reasonable and would not impact the surrounding built environment. Rather, granting the requested relief would address the existing non-conformance with current regulatory standards and afford a legal path for future improvements to both properties.

With respect to the requested relief to allow parking within 6-feet of a lot improved with a single- or two-family use, staff finds that approval of this request would acknowledge and legalize an already existing condition on the subject lot. Parking within 6-feet of the shared property line of the subject lot and that to the north has always existed and both lots are improved with single-family homes. The standard from which relief is sought was non-existent prior to the 2017 and the mere fact that both the applicant and the adjacent property owner are submitting similar applications for relief with respect to this provision is an indication that neither have concerns about having parking being allowed in such close proximity to each other's dwellings. Moving parking further from the shared property line serves no useful purpose, cannot be accommodated on the subject lot given other site encroachments within the side yard, and would result in improvements uncharacteristic of the surrounding built environment.

The subject lot was platted as 50-feet wide in 1922 and improved with a home approximately 30-feet wide that is centered on the lot. The lot was platted in accordance to then minimum lot frontage standards and is 10-feet narrower than contemporary lots within the R-1 zoning district. Given the width of the lot, width of the home, and the topography of the lot sloping to the east, placement of a setback compliant driveway with sufficient width to access the rear of the subject lot not straddling the shared property line and within the required 5-foot setback is not possible from either the northern or southern property lines without relief. Furthermore, compliance with the restriction that vehicle parking cannot be within 6-feet of a lot improved with a single- or two-family uses is also not possible.

The attached applicant correspondence addresses the "variance" criteria in full. The graphics contained within this correspondence provide greater illustrative details as to the "hardships" impacting the subject lot. Following review of the submitted correspondence and graphics, staff believes that approval of the requested relief would result in mutual benefits being secured for both the subject lot and the adjacent property to the south as well as the city. These benefits would include elimination of non-compliance with current regulatory restrictions, that ability to facilitate better utilization of land within the city's urban core, and the opportunity to address potential on-street parking as well as safety issues relating to sight line restrictions along Edgewood Avenue which is classified as a "bike-boulevard". As noted, approval of similar relief for 300 Edgewood Avenue (Case# 62-2026) is necessary prior to any permit being issued for the desired detached garage at 210 Edgewood Avenue.

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 request for relief has been filed to address two 2017 UDC created provisions that require new driveway placement to be located no closer than 5-feet to an existing property line and restrict parking within 6-feet of a lot improved with a single- or two-family uses. The adoption of these standards did not consider the impacts that would be created upon previous platted and improved narrow and deep lots that do not conform to more contemporary lot frontage or area requirements and share an existing driveway. The difficulty and hardship created by the two 2017 UDC provisions was not an action of the applicant, but rather that of the city in its effort to address neighborhood impacts generated as a part of lot redevelopment.

It is readily apparent that the subject lot is not significantly different in its shape or area from the majority of lots along Edgewood; however, the subject lot is different from the majority of lots improved within the city post-1957 which were required to have a minimum lot frontage of 60-feet. Furthermore, denial of the requested relief would preclude the applicant from making future improvements considered consistent with those permitted on adjacent lots simply as a result of the timing that the improvements were sought to be made. Finally, denial of the applicant's request for

relief would thwart the ability of the adjacent property to the south to make similar improvements at some time in the future should they so desire.

If granted, the relief sought would maximize the applicant's use of subject lot's rear yard and that of the adjacent property to the south with the least disruption to the existing neighborhood character via the extension of a 100-year old "shared" driveway eastward approximately 84-feet straddling the common property line. Approval of the requested relief will provide an opportunity to address possible parking deficiencies on the subject lot and the lot to the south as well as will likely reduce the possible needs for on-street parking along Edgewood which is classified as a "bike boulevard".

Furthermore, as explained and shown within the applicant's attached correspondence and graphics, there are topographical as well as other "practical difficulties" in achieving compliance with the 2017 UDC provisions. The topography of lot generally slopes to the southeast corner to an existing stormwater inlet box; however, it also slopes from the southern boundary (i.e. the driveway) to the north toward the dwelling with the highpoint of the lot being near the east end of the existing driveway. Granting the requested relief and allowing the shared driveway to be extended eastward would allow for the existing drainage conditions to be improved by having runoff redirected away from the dwelling toward the southeast corner of the lot and the stormwater inlet box.

Additionally, approval of the relief to allow parking within 6-feet of the adjacent lot on the existing driveway addresses the reality that the driveway is already used for parking and regardless of the request at hand would continue to be used for such activities. It is worth noting, that if not for the applicant's desire to construct a new detached garage in their rear yard the existing lot conditions could remain in perpetuity as they are considered legally non-conforming lot features.

Additional "practical difficulties" observed from a site visit and shown on the attached applicant graphics are the presence of several structural improvements extending southward from the home that would be required to be removed such that the proposed driveway could be shifted closer to the dwelling. However, even if these structural elements were removed it would not fully resolve the need for the relief requested given the available distance from the structure to the property line is insufficient to allow for a code compliant driveway and on-site parking to be facilitated.

- B. A detached garage is a permissible "accessory use" within the R-1 zoning district. Approval of the requested relief would not result in modifying the definition of this use or any other definition applicable to improvements permitted on the lot. Approval of the requested relief sought within Case # 62-2026 is required to ensure both the subject lot and adjacent property meet current regulatory standards. Denial of any aspect of relief in either this application or Case # 62-2026 would negate the applicant's ability to access the rear yard of the subject lot.
- C. The Comprehensive Plan does not specifically address the issue of setbacks within residential development; however, does address the issue of creating "Livable and Sustainable Neighborhoods". Approval of the requested relief would not alter the character of the existing built environment, but would rather provide an opportunity to create a more "livable" neighborhood by pulling on-street parking into the lot and eliminating possible conflicts between the applicant and adjacent property owner with respect to parking and access to their respective rear yards. Furthermore, the improvement sought by the applicant will enhance the value of the home on subject lot as well as potentially create opportunities to better utilize now under-utilized space. The proposed improvement of the rear yard with a detached garage is not inconsistent with other adjacent lots within the neighborhood.

- D. Approval of the requested relief would be the least change necessary to permit the future construction of a detached garage on the subject lot and would ensure that improvements pre-dating the 2017 UDC standards would be deemed regulatorily compliant. Additionally, granting the requested relief would ensure that any expansion of the existing lot features can be pursued legally and were properly authorized in accordance with the city's code standards. Finally, approval of the requested relief would permit future improvements that enhance the value of the subject lot that are not inconsistent with adjacent development.

The other available options that could be pursued to address the relief needed to permit the construction of the detached garage upon the subject lot would be to seek a rezoning of the property to a PD (Planned Development) and request a "design exception" from the setback standards or request a text change to the Code to revise the provisions for which relief is sought such that any similarly impacted lots would receive equal treatment in the future. Either option is considered more significant than necessary given the uncertain outcomes that could result and the time necessary to prepare and process the requests. The variance process is intended to address "unique" lot induced hardships similar to the ones presented within this application. Staff is evaluating if a more comprehensive revision to the UDC is needed to address similar situations in the future; however, such evaluation is not complete.

- E. Approval of the requested relief is not perceived as harming the public health, safety, or welfare. In fact, approval the relief to both standards will likely positively impact safety and welfare by reducing on-street parking demands and creating more safe conditions for users of the bike-boulevard given the additional on-site vehicle parking options created. As for approval of the relief being injurious to adjacent property or improvements within area, approval of both requests would result in very similar improvements being possible on the subject lot as those presently existing on adjacent properties.

#### **Recommendation Action –**

If the Board finds that compelling testimony has been given, a recommendation supportive of the requested relief would be appropriate subject to the following conditions:

- 1. The approximate 80-feet of the existing "shared" driveway serving both 210 and 300 Edgewood Avenue as described in Book 823, Page 557 of the Boone County Records shall become regulatorily compliant and any future extension of said driveway along the southern property line of 210 Edgewood Avenue may be lawfully located within 5-feet of the property line; and**
- 2. The applicant shall be granted relief from and permitted to establish on-site vehicle parking within 6-feet of the southern property line of 210 Edgewood Avenue only.**

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.