

**CITY OF LEBANON
PLANNING AND ZONING DEPARTMENT**

**BOARD OF ZONING APPEALS
STAFF REPORT
MARCH 7, 2022 PUBLIC HEARING**

A. Case Number:	Docket #22-18
B. Applicant:	Master Built Construction / Betty Amos
C. Location:	The subject property is located at 940 Spencer Ave., Lebanon, Indiana 46052.
D. Acreage and Zoning	The subject property is zoned Neighborhood Business (NB) and comprised of approximately 1.57 acres. The subject lot configuration is 96 feet wide by approx. 693 feet in depth.
E. Property History:	History of Property: This is the first time the requested Variance has appeared before the City of Lebanon Board of Zoning Appeals. The lot currently contains a single-family residential home with a recently constructed two-story attached garage and living space. The new constructed garage is 4.7 feet from the side property line and is an illegal non-conforming structure.
F. Variance Request(s):	Applicant Request: Development Standard Variance Request Variance Request – Primary Structure Side Setback UDO Section 4.6.D The applicant demolished a previously existing detached garage that was approximately 5 feet from the eastern side property line. The applicant submitted a residential addition permit with construction documents for the new attached structure indicating the new structure was to meet the required 7 ½ feet side setback. This permit was approved by the Planning office. Throughout the course of construction, Planning Department building inspectors inspect various stages of construction to ensure compliance with building code and, where possible, verify the structure meets applicable setbacks. In this case, due to the fact that this is a rural property where it is not feasible to identify property corners, inspections were approved and construction proceeded accordingly. The Planning office received a call when the structure was nearing completion from an adjoining property owner with concerns about the structure’s proximity to the property line. At that time, staff requested the applicant acquire the services of a licensed surveyor to verify the setback for the new structure and it was discovered it was approximately 4.7 feet from the property line rather than the required 7.5 feet. Staff contacted the applicant to let them know the structure did not meet required setbacks and a certificate of occupancy could not be issued until this was corrected. One of two actions will need to take place to correct this setback issue. The first is the recently completed structure would need to be modified to increase the setback.

G. Variance Evaluation:

This would be particularly onerous, so Staff recommended the alternative to seek a variance for relief from the side setback requirement to allow the addition to remain in its current location.

Therefore, the applicant is seeking a Development Standard Variance to create a conforming condition for the attached garage and home addition that does not meet the 7 ½ foot side setback requirement.

Evaluation of Variance(s)

Statutory Authority of BZA for Reviewing Variances.

Pursuant to State Statute and the Lebanon Unified Development Ordinance, the Board of Zoning Appeals must find that each of the following conditions is satisfied in order to grant a variance of use. Per Indiana Code (IC) 36-7-4-918.5; No variance in the application of the provisions of the ordinance shall be made by the Board relating to buildings, land or premises now existing or to be constructed, unless after a public hearing, the Board shall find, in writing that the variance of use listed above has been reviewed based on the following three (3) statutory criteria:

Statutory Criteria

Criteria-1 The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Criteria-2 The use and value of the area adjacent to the property included in the variance will not be affected in a substantial adverse manner.

Criteria-3 The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property.

Staff Evaluation of Development Standard Variances

Variance – Primary Structure Side Setback

UDO Section 4.6.D

The applicant is seeking a Development Standard Variance to create a conforming condition for the existing attached garage and home addition that does not meet the 7 ½ feet side setback requirement as required by the UDO.

Staff Evaluation of Development Standard Variances

Criteria-1 The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Staff Analysis

The reduction in the side setback poses no imminent threat to the public health, safety, morals, or general welfare of the community. The applicant improved upon a structure that has existed for many years. While the structure is in closer proximity to the side property line, the request is consistent with how other lots in the area have been developed and would not overly impose upon the immediate neighbors, whose home is more than 200 feet from the subject structure.

Criteria-2 The use and value of the area adjacent to the property included in the variance will not be affected in a substantial adverse manner.

Staff Analysis

The requested variance in the side setback is compatible with existing development in the neighborhood. Many of the properties in the immediate vicinity of the subject property contain primary structures and garages with setbacks consistent with the applicant's request. The updated garage and home addition on the subject property will effectively add value to the immediate property and area and will not adversely affect the use of adjacent properties. In addition, the garage replaced an existing non-conforming garage that is in a similar location to this application.

Criteria -3 The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property.

Staff Analysis

The newly constructed addition and garage is currently a non-conforming structure in its current setback from the side property line. The variance is needed because asking the property owner to tear down the structure and to rebuild it less than 3 feet from its current location would present an undue hardship on the property owner. The strict application of the terms of the UDO would create practical difficulties for the property owner.

**H. Staff
Recommendation:**

Staff Recommendation:

The City of Lebanon Planning Staff recommends approval of the Development Standards Variance request to permit the existing garage and home addition that is 4.7 feet from the side property line.