Board of Adjustment

AGENDA ITEM REPORT

D.2

To: Board of Adjustment

Subject: Hold a public hearing, discuss, consider, and act upon a request for a variance to Section 3.04.04, Subsection A. Accessory Buildings of the Unified Development Ordinance (UDO) to allow for a variance related to the rear yard setback for an accessory structure on the property located at 280 Ontario Loop which is zoned Stoney Creek Planned Development (PRO-463). **Case 1854-ZBA/280 Ontario Loop Accessory Structure**

Meeting: Board of Adjustment - September 2, 2025

Department: Development Services

Staff Contact: Surupa Sen

SUGGESTED ACTION:

BACKGROUND INFORMATION:

The property subject to this request is located at 280 Ontario Loop and is zoned Stoney Creek Planned Development (PD/PRO-463) residential zoning district. The lot is part of Stoney Creek Subdivision, Phase 2F, one of earlier phases of the Stoney Creek master planned community. This phase of Stoney Creek is located west of N Collins Road. There is currently one single-family residence on this property with primary access from Ontario Loop through one driveway. The residence faces Ontario Loop, and the lot is approximately 0.52 acres in size.

The applicant submitted a building permit application to the Town for a patio cover and a second story balcony enclosure to the Town. The patio cover permit and plans were reviewed and approved as an attached accessory structure. Prior to submitting the application for permit to the Town, the applicant received approval from the Stoney Creek homeowner's association (HOA) as well. Since issuance of the building permit, the applicant began construction. While the accessory structure was under construction, an inquiry was made to the Town regarding the location of the structure and if it was too close to the rear lot line. It was discovered that the plans were approved with a 5-feet rear yard setback for an attached accessory structure aka the patio cover. However, the Unified Development Ordinance (UDO) additionally stipulates, where a rear alley does not exist, the accessory structure must meet 10-feet rear yard

setback. The lot at 280 Ontario Loop does not have a rear alley. This 10-feet rear yard setback requirement was overlooked during plan review. As a result, while the applicant followed the approved building permit and plans, the accessory structure had been built within 6.5-feet of the rear property line. The permit had been issued in error. The Chief Building Official advised the applicant to apply for a variance from the required 10-foot rear yard setback for accessory structures where no alley is present.

Following staff advice, the property owner is requesting variance from the minimum setback of 10 feet from the rear property line.

The UDO states that the Zoning Board of Adjustment may authorize a variance from zoning ordinance requirements when, due to special conditions, an undue hardship will result from requiring literal application of the zoning regulation. The following are listed criteria for zoning variance approval:

1. *Unique Circumstances* - That there are special circumstances or conditions affecting the land involved such that the application of the typical zoning regulations would deprive the applicant of the reasonable use of their land.
2. *Minimum necessary Relief Required to Alleviate the Undue Hardship* - That the zoning variance, if granted, would be the minimum necessary relief required to alleviate the undue hardship.
3. *Preservation of Property Rights* - That the zoning variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.
4. *No substantial Detriment to the Public Good* - That the granting of the zoning variance will not be detrimental to the public health, safety, or welfare, impair the purposes and intent of the typical zoning regulations and the Comprehensive Plan or be injurious to other properties within the area.
5. *Orderly Use of Land* - That granting will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of the zoning regulations.
6. *Precedent* - That the granting of an individual zoning variance will not set a precedent.
7. *Finding of Undue Hardship* - That an undue hardship exists, using the following criteria:
    1. That literal enforcement of the controls will create an undue hardship or practical difficulty in development of the affected property; and
    2. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and
    3. That the relief sought will not injure the permitted use of adjacent conforming property; and
    4. That the granting of a zoning variance will be in harmony with the spirit and purpose of these regulations.
    5. Financial hardship alone is not an "undue hardship" if the property can be used, meeting the requirements of the zoning district in which the property is located.
    6. Under any circumstances, if the property can reasonably be developed or used meeting the requirements of the zoning district in which the property is located, the ZBA shall not grant a variance.

In reviewing the criteria in the context of this variance request, it is important to apply them to the property as it exists today to determine if unique circumstances warrant granting the requested variance from the required minimum setback. The request in question may qualify for a unique property hardship, as the plans that were approved by staff were approved erroneously and at no fault of the applicant or owners. This hardship is not self-imposed.

PUBLIC NOTICE:

Eleven letters were sent to neighboring property owners within 200 feet of the subject property. The Town has received three responses in opposition and one in support of the variance request.

ATTACHMENTS:

Map
Plans
HOA Approval Letter
Accessory Structure Images
Response letter to public hearing notification (1)
Response letter to public hearing notification (2)
Response letter to public hearing notification (3)
Response letter to public hearing notification (4)