**Staff Notes**

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**{Public Hearing}**

**Item #1 Tony and Kelsey Porter:** Requests a (5’) five-foot side setback variance. Property is referenced as Sumner County Tax Map 077, Parcel 022 and is zoned R-20, Low Density Residential. Property consists of .3 acres and is located at 209 Louise Drive.

**Staff Notes:** The applicant is requesting 5’ variance on the side of the home. The property is zoned R-20 Low Density Residential on .3 Acres. The lot is a corner lot with 2 front yards, causing a decreased rear yard. From the street, it is visible that there are also sloping issues at the rear of the yard.

**Staff Recommendation**- Approval, due to the property grades and size of the rear yard.

***1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated***

The Board will need to review the proposed request in relation to the Zoning Ordinance Section

***9.060 Variances***during the meeting. The motion to approve or deny the request including any

approval stipulations/conditions will need to be included in the motion.

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**Referenced Zoning Ordinance Sections:**

**3.100 Accessory Use Regulations**

The use of land, buildings, and other structures permitted in each of the districts established by this Zoning Ordinance are designated by listing the principal uses. In addition to such principal uses, accessory uses which are customarily incidental to the permitted principal uses are also permitted in each district. Each accessory use shall:

 A. Be customarily incidental to the principal use established on the same lot.

 B. Be subordinate to and serve such principal use.

 C. Be subordinate in area, intent, and purpose to such principal use.

 D. Contribute to the comfort, convenience, or necessity of users of such principal use.

 E. Total accessory use in residential areas shall be limited to covering no more than seventy (70%) percent of the size of the principal use on any lot. The Board of Zoning Appeals may review a larger percentage depending on special conditions relating to the property, including but not limited to, the property and primary building size in relation to the minimum lot size and maximum lot coverage provisions of the zoning district.

 ***F. Accessory buildings shall be located in the rear yard or side yard. Buildings located in the rear year shall be ten (10) feet off the property lines for low and medium density zoned districts*** and five (5) feet off the property lines for high-density, planned unit development districts, and alternative lot size developments in low and medium-density zoning districts. Buildings located in the side yard shall be determined by the side yard setback requirements of the zoning district.

 G. Residential zoned properties five (5) acres and larger special square footage and classification provisions: The maximum accessory building(s) square footage may be allowed to be three (3) times the primary building square footage not to exceed total square footage of 6,000 sq. ft. A building not constructed as a single-family dwelling may be permitted on an undeveloped property not exceeding 1,000 sq. ft. The building shall be constructed on the back half of the property to permit future primary single dwelling unit construction on the property unless scaled plans are provided to show a planned area for a single-family dwelling unit meeting setback requirement in front of the proposed building. Buildings constructed under this section are for private non-commercial use. The Board of Zoning Appeals may review variance requests for increased square footage based on the defined conditions of a property.

**9.060 Variances**

***The purpose of this procedure is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.***

 A. Application

 After written denial of a permit, a property owner may make application for a variance, using any form which might be made available by the Board of Zoning Appeals.

 B. Hearings

 Upon receipt of an application and fee, the Board shall hold a hearing to decide whether a variance to the ordinance provisions is, in fact, necessary to relieve unnecessary hardships. The Board shall consider and decide all applications for variances within thirty (30) days of such hearing and in accordance with the standards provided below. A fee of one hundred-fifty dollars ($150.00) shall be charged to cover review and processing of each application for a variance, except that the fee shall be waived for a governmental agency. Before a variance is granted, relative to a parcel of land containing a structure, a permit fee of five hundred dollars ($500.00) shall be paid, which is nonrefundable, in order for the Board of Zoning Appeals to hear the request. The Board of Mayor and Aldermen by resolution may waive the permit fee if found justifiable.

 C***. Standards for Variances***

 ***The Board shall not grant a variance, except where special circumstances or conditions, fully described in the findings of the Board, do not apply generally in the district. The burden of showing that the variance should be granted shall be upon the person applying for the variance. In granting a variance, the Board shall ascertain that the following criteria are met:***

 ***1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.***

 ***2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.***

 ***3. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance, to other land structures, or buildings in the same district.***

 ***4. Financial returns only shall not be considered as a basis for granting a variance.***

 ***5. The variance is the minimum variance that will relieve such difficulties or hardship and thereby make possible the reasonable use of the land, building, or structure.***

 ***6. The variance will not authorize activities otherwise excluded from the particular district in which requested.***

1. ***That the granting of the variance will not be detrimental to the public welfare, injurious to other property or improvements in the area in which the subject property is located, or a substantial impairment to the intent and purpose of the zoning***
2. ***district wherein such property is located or of the general provisions of this ordinance.***

 ***8. The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, endanger the public safety.***

 ***9. That the alleged difficulty or hardship has not been knowingly and intentionally created by any person having an interest in the property after the effective date of this ordinance.***

 **D. Restrictions and Variances**

 1. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

 2. Under no circumstances shall the Board of Appeals grant a variance to allow a "USE" not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

 3. The Board may impose such conditions and restrictions upon the premises benefitted by a variance as may be necessary to comply with the provisions set out in Section 9.070, C., above, to reduce or minimize the injurious effect to such variation upon surrounding property and better carry out the general intent of this ordinance. The Board may establish expiration dates as a condition or as a part of any variances.