

1 Minutes of the Centerville **Board of Adjustment** Hearing held Monday, May 20, 2024, at 5:30  
2 pm with participants present at Centerville City Hall, 250 North Main Street.

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4 **MEMBERS PRESENT**

5 Brian Hulse, Chair  
6 David Hirschi  
7 Paula Tew  
8 Scott Sappenfield  
9 David Ditto

10  
11 **STAFF PRESENT**

12 Lisa Romney, City Attorney  
13 Mike Eggett, Community Development Director  
14 Jennifer Robison, City Recorder

15  
16 **VISITORS**

17 Thomas Howell and family

18  
19 **PROPERTY VARIANCE REQUEST – THOMAS HOWELL**

20  
21 Scott Sappenfield disclosed that he lived in the same contiguous block as the Howell  
22 family, although no property lines were shared. He said he had been aware of the Howell family's  
23 difficulty and had suggested they contact the City, perhaps with Board of Adjustment involvement,  
24 although he had not been involved in further discussions. Mr. Sappenfield said he believed he  
25 could act in a fair and impartial manner.

26  
27 Community Development Director Mike Eggett said the subject property was located on  
28 the corner of 200 East and 1875 North (Canyon View Circle) in the Rolling Hills Estates  
29 Subdivision in the Residential-Low (R-L) Zone with a Hillside Overlay. The lot was a corner lot  
30 with frontage along two sides. In the R-L Zone, corner lots were subject to a front yard setback of  
31 25 feet and a street side yard setback of 20 feet. Setbacks were measured from the property line.  
32 By contrast, interior lots were subject to a front yard setback of 25 feet and an interior side yard  
33 setback of 8 feet (provided the minimum total width of both side yards was at least 18 feet).

34  
35 The applicant desired to construct an addition onto his home that would encroach  
36 approximately 10 inches into the required 20-foot street setback area along 200 East. The  
37 applicant contended the shape of the lot was not a "typical" lot configuration within the subdivision  
38 and, as a result, created an unnecessary hardship for the applicant to design and build an addition  
39 onto his home. Therefore, the applicant was seeking a variance from the Board of Adjustment to  
40 allow the proposed building addition to encroach into the street side yard setback by  
41 approximately 10 inches.

42  
43 Mr. Eggett said staff had looked at multiple alternative solutions, and looked at other areas  
44 of the City Zoning Code in an attempt to assist Mr. Howell, and had not identified anything in  
45 current Zoning Code that would provide a solution absent applying to the Board of Adjustment for  
46 a variance.

47  
48 With the variance request, the applicant noted the following characteristics of the property  
49 that resulted in an unnecessary hardship:

- 50  
51
- 52 • The property was a corner lot in which the two intersecting streets created an acute  
53 angle of less than 90 degrees.
  - There was a steep tapering on the east from the front to the rear of the property.

- 1           • There was a moderate tapering on the west side of the property relative to the existing  
2           house orientation.  
3           • The rear property line was approximately 30% shorter than the front yard property line.  
4

5           Mr. Eggett presented approval standards for the Board of Adjustment to use in evaluating  
6 the requested variance:  
7

- 8           • Literal enforcement of the Zoning Code would cause an unreasonable hardship for the  
9           applicant that is not necessary to carry out the general purpose of the Zoning Code;  
10          • There are special circumstances attached to the property that do not generally apply  
11          to other properties in the same zoning district;  
12          • Granting the variance is essential to the enjoyment of a substantial property right  
13          possessed by other property in the same zoning district;  
14          • The variance will not affect the General Plan and will not be contrary to the public  
15          interest; and  
16          • The spirit of the Zoning Code is observed, and substantial justice done.  
17

18          Mr. Eggett presented additional standards for consideration included in the Staff Report.  
19 He said it was staff's position that the applicant had not met its burden of proving that literal  
20 enforcement of the Zoning Code would cause an unreasonable hardship for the applicant that  
21 was not necessary to carry out the general purpose of the Zoning Code. While it may be more  
22 expensive, it was feasible to set the home addition back from setback line and/or provide a step  
23 back from the existing building line of the home. As noted in the Zoning Code and State law, the  
24 Board of Adjustment may not find an unreasonable hardship exists if the hardship is self-imposed  
25 or economic.  
26

27          Mr. Eggett said it was staff's position that the applicant had not established special  
28 circumstances attached to the property that did not generally apply to other properties in the same  
29 zoning district. There were many corner lots in the R-L Zone, and such corner lots were of varying  
30 sizes and dimensions. While the size of the lot may impact the size of the addition that may be  
31 built, it did not prevent a home from being built on the lot. As such, the property owner was not  
32 deprived of privileges granted to other properties in the same zone. The size and dimensions of  
33 the lot merely impacted the size and location of an addition. He said the applicant had the ability  
34 to utilize the property in a way that would accommodate a home addition further to the south of  
35 the existing home on the property.  
36

37          Mr. Eggett said if there was not an identified hardship on the property due to an "existing  
38 special circumstance" or "peculiar circumstances," then the subject property should not qualify for  
39 the granting of a variance. He said it had been discussed with the applicant that the construction  
40 of an addition could be shifted 10 inches or so to the southeast on the property in a way that would  
41 no longer encroach into the corner side yard setback. This slight location shift for the proposed  
42 addition footprint would allow the property owner to have the same development opportunities as  
43 any other property owner within the area of the City and the associated R-L Zone.  
44

45          City Attorney Lisa Romney emphasized conditions for evaluating a variance according to  
46 City Code and State law, and clarified that to grant a variance, the Board of Adjustment must find  
47 that all five conditions were met. If a variance were granted, the applicant would then need to  
48 apply for a building permit in order to construct the proposed addition.  
49

50          Mr. Sappenfield asked if a percentage of the 10 inches could be within a margin of error,  
51 or if the 10 inches was to be considered exact. Ms. Romney responded that no survey had been  
52 done, but staff accepted the 10 inches. Mr. Eggett said a provision of Code allowed an  
53 encroachment of five inches or less without requiring a variance. Ms. Romney listed the following

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1 purposes for street side yard setbacks: maintain aesthetics of a neighborhood, promote health  
2 and safety, provide for utilities, provide for driver and vehicle visibility, and open space. She said  
3 she believed the Board of Adjustment could probably find that the general purposes were met in  
4 the given situation.  
5

6 Responding to a question from the Board of Adjustment, Ms. Romney said staff were  
7 concerned with the precedent that may be set with a variance. She said the applicant would need  
8 to show there are special circumstances attached the subject property that do not generally apply  
9 to other properties in the same zoning district. Mr. Hulse commented that some of the reasons for  
10 the 20-foot side yard setback did not apply in the subject situation.  
11

12 Thomas Howell, applicant, introduced his family members in attendance. Mr. Howell said  
13 he would do his best to show why the variance should have been championed by City staff, and  
14 point out where the City had fallen short in its analysis and application of the law. He emphasized  
15 that none of his comments should be construed as personal attacks or criticisms, and said he did  
16 not question the dedication of staff. Mr. Howell said setback variances were granted frequently  
17 by other municipalities, and suggested City staff did not fully understand State law regarding  
18 variances.  
19

20 Mr. Howell said physical conditions that could be unique to a property establishing special  
21 circumstances and hardship included lot size, shape, and topography. Mr. Howell provided  
22 multiple exhibits. He showed with a top-down architectural site plan that the requested variance  
23 was for a total of 2.8 square feet crossing the setback line. He said staff had taken a black-and-  
24 white approach to evaluating the variance application, which he believed was inconsistent with  
25 State Code and the manner in which cities throughout the State used the Code in practice.  
26

27 Mr. Howell said the amount of the hardship was to be weighed against the amount of the  
28 variance requested under the first approval standard. Mr. Ditto asked what unreasonable hardship  
29 was caused for the applicant, and Mr. Howell asked to address the question later in his comments.  
30 Mr. Howell said the question was whether the hardship he was experiencing was outweighed by  
31 the sliver that infringed minimally on the setback. He referred to exhibits provided, and stated the  
32 inability to exercise a substantial property right was the hardship. Mr. Howell used Exhibit A to  
33 show the angle between the two streets meeting at his corner lot was less than 90 degrees. He  
34 showed severe tapering of the property line from the front to the back resulting in a rear property  
35 line that was approximately 30% shorter than the front property line. Mr. Howell said the Board of  
36 Adjustment needed to determine what was meant by the phrase "does not generally apply to other  
37 properties." He said he did an informal survey of every home in the Hillside Overlay District, and  
38 found that of the approximately 570 homes in the Hillside Overlay District, 98 were corner lots  
39 (17.2%). Only four of the corner lots dealt with the same type of shape problems as his property.  
40 Of those 4 homes, two were angled away from the street side setback, one of the homes had  
41 likely already maxed out the buildable space on the lot, and the fourth was his property. He said  
42 the four homes together represented 0.7% of all homes in the Hillside Overlay District, and said  
43 he believed 0.7% was rare enough to establish special circumstances.  
44

45 Mr. Howell expressed frustration that staff had not agreed that shape qualified sufficiently  
46 to show special circumstance. He said special circumstances were present everywhere, though  
47 only manifested when a property owner was struggling to enjoy a substantial property right. Mr.  
48 Howell said he had clearly shown special circumstances. Regarding the possibility of setting a  
49 precedent, Mr. Howell said new applicants would only be able to claim precedence if their property  
50 was subject to the exact same criteria used to grant his variance: corner lot with acute angle and  
51 severe taper of approximately 30%. He expressed the opinion that the Board of Adjustment could  
52 grant his variance without opening the possibility for other applicants to assert precedence  
53 because his circumstances were so unique.

1  
2 Mr. Howell read aloud State guidance regarding the concept of substantial property rights,  
3 “it is necessary for the variance to relate to a substantial property right enjoyed by other nearby  
4 properties that would not be fully available unless the variance were granted. The right must be  
5 one enjoyed or available to nearby properties.” He said the right he could not currently exercise  
6 was the right to build an addition to his home that aligned with at least one exterior wall on the  
7 side of his house. He said the ability to align with at least one exterior wall was necessary for  
8 functionality and aesthetics. He said he had counted 14 of his neighbors who had already  
9 exercised that right. Mr. Howell stated he was trying to make reasonable improvements to his  
10 home that were in line with what other property owners in the zoning district and his immediate  
11 neighbors had available.  
12

13 Mr. Howell asserted that building an addition in line with the west side of his home was a  
14 substantial property right because the east side of the home was unavailable due to special  
15 circumstances – specifically, the severe tapering. He stated his situation was a textbook example  
16 of a hardship due to the shape of a property. Mr. Howell said adding space to the home just  
17 anywhere on the property as suggested by the Staff Report would not provide the same  
18 substantially equivalent enjoyment of the property right because functionality and aesthetics  
19 would be severely impaired. He said the Code did not include provisions that allowed for staff to  
20 disregard the hardship because of theoretical alternatives.  
21

22 Mr. Howell read aloud the following statement from page four of the Staff Report: “While  
23 the size of the lot may impact the size of the addition that may be built on the lot, it does not  
24 prevent a home from being built on the lot. As such, the property owner is not deprived of  
25 privileges granted to other properties in the same zone.” Mr. Howell stated while some owner  
26 privileges were available by statute, many more privileges were established by common utilization  
27 or the simple fact that the privilege was generally available. He said fourteen of his neighbors had  
28 already taken advantage of the privilege to add onto their homes in line with at least one side of  
29 the home, and said he did not know how else to quantify the hardship except to say he worked  
30 with professional engineers, architects, and builders to rigorously consider every possible  
31 alternative for six months before concluding a variance was the only possible solution. Mr. Howell  
32 stated there would be no addition to the home without the variance. He said the lack of viable  
33 alternatives should demonstrate that the hardship was disproportionate to the tiny variance  
34 needed. Mr. Howell stated if he did not receive relief from the Board of Adjustment, his only  
35 alternative, as stipulated in the State Code, was to sue the City in District Court. He said he hoped  
36 the situation did not go that far.  
37

38 Referring to the approval condition that the variance not substantially affect the General  
39 Plan and not be contrary to the public interest, Mr. Howell said his request would not affect the  
40 General Plan. He said a reasonable disinterested third party would agree that the amount of the  
41 request was minor and inconsequential, and said it would be difficult to argue that the minor  
42 request had any effect on the General Plan. Mr. Howell pointed out that staff omitted the word  
43 “substantially” from the phrase “will not substantially affect the General Plan...” in the Staff Report.  
44 He said the approval standard outlined in the Staff Report would effectively prohibit any variance  
45 from ever being approved. Mr. Howell compared his variance request to the six stated purposes  
46 of the General Plan, and said no aspect of the General Plan would be harmed by allowing the  
47 variance. He suggested many of the goals of the General Plan would be furthered by granting the  
48 variance. He said the Staff Report did not address how the sliver of a variance would harm the  
49 spirit of the General Plan, and did not address how recommending against the variance provided  
50 substantial justice to the applicant.

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1 Mr. Howell said the legal standard for a self-imposed hardship was demonstrated by a  
2 property owner taking some sort of affirmative action on a property that created a hardship. He  
3 said he had done nothing to his home or property since purchasing the home that created the  
4 special circumstances or hardship. The orientation of the home on the lot was determined by the  
5 builder in 1992. He said he felt the Staff Report prejudiced the application and demonstrated lack  
6 of understanding of variance standards by implying that the application failed because the  
7 hardship was both self-imposed and economic, but did not note any affirmative action that had  
8 been taken to cause the self-imposed hardship. Mr. Howell said economics had never been a  
9 primary justification in his argument.

10  
11 Mr. Howell asserted that the reasons for denial listed in the Staff Report were without  
12 merit, and read aloud from an exhibit refuting suggested reasons for action (a-g) for denial. He  
13 expressed the opinion that the Staff Report was poorly written, scattered, and confused with  
14 regard to principal standards governing the variance application. Mr. Howell emphasized the  
15 substantial hardship he experienced was the ability to build an addition in line with at least one  
16 side of his home.

17  
18 Mr. Howell said that because the Staff Report recommended denial of his request, he was  
19 forced to reassert that his application was reasonable, justifiable, and should be approved, while  
20 simultaneously refuting mistakes in the Staff Report. Mr. Howell said just as staff provided a pre-  
21 filled motion for denial, he provided the Board of Adjustment with language for an approval of the  
22 variance. He said he hoped the Board of Adjustment would feel satisfied that his family, as regular  
23 citizens, had done an adequate job of navigating a difficult and technical process. Mr. Howell  
24 suggested that if his minor, narrowly defined request could not get through the City's variance  
25 process, he wondered what application could, and suggested the screws were turned down a little  
26 too tight. He urged the Board of Adjustment to recognize the merits of the application, and the  
27 minimal to no impact the request had on the General Plan.

28  
29 Mr. Ditto pointed out, as explained by staff, that a variance would not be required due to  
30 rounding calculations set forth in the Zoning Code if the home addition entered into the setback  
31 by five inches or less. Mr. Ditto asked Mr. Howell how the project would be changed by reducing  
32 the infringement to 5 inches into the setback. Mr. Howell said the actual amount needed was  
33 calculated at 9.8 inches, but he put 10 inches in the application just to be sure. Responding to a  
34 question from Mr. Sappenfield, Mr. Howell said the staff suggestion to move the addition further  
35 south was a theoretical alternative, but argued that the hardship stemmed from a substantial  
36 property right that had been exercised by many people in his neighborhood – the right to build an  
37 addition in line with one side of the house. He said trying to cut a notched piece from the addition  
38 would encumber the functionality of the kitchen in what otherwise would be a property right  
39 available to him. He said his family's desire was to add a small bedroom on the floor above the  
40 kitchen and another bedroom on the floor below, which would be impacted by a removal of a  
41 notched piece.

42  
43 Chair Hulse asked when in the process the Howell family found out the setback was a  
44 problem. Mr. Howell said they became aware in September of 2023, when their architect told  
45 them the addition would touch the setback. He said staff were not encouraging at that time, and  
46 his family had needed to forge through the process alone. Mr. Ditto asked how Mr. Howell decided  
47 on a 16-foot addition. Mr. Howell responded that 16 feet was needed to fit a bedroom on the  
48 outside of the existing foundation. Chair Hulse thanked Mr. Howell for the presentation.

49  
50 Mr. Hirschi suggested the Board discuss the five variance approval standards one at a  
51 time. Mr. Ditto expressed the opinion that the requested variance was a minor departure from the  
52 standard, and would have a huge impact on the property owner compared to impact on the City  
53 or the General Plan. Chair Hulse emphasized that the Board's findings needed to be very specific

1 to the particular project regardless of the end decision. Mr. Sappenfield expressed the opinion  
2 that in addition to the acute angles, the property was also unique in the fact that the variance  
3 would be in an area that would not impinge on anyone else's property, and would not restrict  
4 emergency vehicles.  
5

6 Mr. Hirschi said he did not see anything in the statute, ordinance, or Staff Report that  
7 specifically defined size, shape, or topography as being special circumstances (second approval  
8 standard). Ms. Romney said looking at case law, courts had looked at some of those factors. Ms.  
9 Romney read aloud from the Property Rights Ombudsman website, "special circumstances refer  
10 to physical conditions unique to the property which relate to the hardship and make compliance  
11 difficult." She read aloud a question from case law, "is the property unusual by topography or  
12 shape, or is there anything extraordinary about the property itself" and suggested the Board of  
13 Adjustment apply the question to the current variance request. Chair Hulse responded the  
14 property was unusual in shape with acute street angles, a 20-foot side street setback, and the  
15 fact that the home was originally placed in a configuration that made it difficult to build any addition  
16 onto the home without running into a setback problem. Ms. Romney added that the rear property  
17 line was approximately 30% shorter than the front yard property line. Mr. Ditto commented that  
18 the slope of the property could also be a factor. Ms. Romney pointed out the City's Subdivision  
19 Ordinance encourages lot lines to be perpendicular to the street (90-degree angles), and the  
20 subject property differed from that goal. Chair Hulse suggested the City should verify the number  
21 of corner lots with acute angles in the Hillside Overlay claimed by the applicant (4). Ms. Romney  
22 said she believed the applicant had provided additional information and evidence that evening to  
23 show that the property was more unique than previously thought.  
24

25 The Board of Adjustment reviewed the first approval standard regarding unreasonable  
26 hardship. Ms. Romney read from the Property Rights Ombudsman website, "a variance is not  
27 necessary if compliance is possible, even if the property owner has to alter desired plans." She  
28 said she believed the applicant had shown some hardship in terms of the design of the home and  
29 wanting to build along an exterior line. Mr. Sappenfield said he agreed, and spoke of the impact  
30 of irregular building lines on roof lines. He said he believed the impact a change would have on  
31 the functionality of the plans constituted a hardship. Chair Hulse expressed the opinion that the  
32 area of the requested variance was tiny compared to potential design, construction, and functional  
33 difficulties of an addition without the variance. Ms. Romney advised that if the Board of Adjustment  
34 could define hardship in special circumstances, economics did not need to be argued in a finding.  
35 She advised inclusion of a finding clarifying that the hardship was not self-imposed.  
36

37 The Board of Adjustment reviewed the third approval standard regarding enjoyment of a  
38 substantial property right possessed by other property in the same zoning district. Ms. Romney  
39 said much of the relevant case law dealt with the property right of building a home on residential  
40 property. She said it was for the Board to determine whether building an addition to an existing  
41 home was a substantial property right. She said the evidence from the applicant was that 14 of  
42 his neighbors had exercised the right. Mr. Hirschi expressed the opinion that the taper on the east  
43 side of the property and the position of the house on the property were relevant, and beyond the  
44 control of the applicant. Mr. Ditto expressed agreement.  
45

46 The Board reviewed the fourth approval standard regarding effect on the General Plan  
47 and the public interest. Chair Hulse said he did not think any of the reasons for maintaining the  
48 20-foot setback would be impacted by the requested 10 inches. Mr. Ditto said he believed the  
49 proposed design of the addition would contribute to the quality of the structure and the quality of  
50 the neighborhood more than trying to configure the design in an odd way. Ms. Romney said the  
51 argument could be made that open views and public interest would be maintained with the  
52 requested variance. Mr. Hirschi said the property was raised above the street, and traffic and  
53 pedestrian site lines would not be impacted. The Board of Adjustment discussed the fourth

1 variance approval standard which requires “the spirit of the Zoning Code is observed, and  
2 substantial justice done.”  
3

4 Chair Hulse mentioned the uniqueness of the lot, the location, the fact that the one side  
5 yard came in at an angle, and said the combination of all the different factors made the requested  
6 variance work. Mr. Hirschi said he had sat through several such hearings, and had never seen a  
7 more well-thought out, thorough, and reasoned presentation.  
8

9 Mr. Hirschi **made a motion** for the Board of Adjustment to APPROVE the request for a  
10 10-inch tapering and 7-foot-long variance to the proposed building infringement into the street  
11 side yard setback for property located at 208 East 1875 North within the R-L Zone and the Hillside  
12 Overlay as more particularly set forth in the application, with the following reasons for action. Ms.  
13 Tew seconded the motion, which passed by unanimous vote (5-0).  
14

- 15 1. Literal enforcement of the Zoning Code would create an unreasonable hardship for  
16 the applicant that is not necessary to carry out the general purpose of the Zoning Code.
- 17 2. Purchasing an existing odd-shaped lot is not a self-imposed hardship.
- 18 3. Compliance with the literal enforcement of the Zoning Code is not necessary to carry  
19 out the purpose of the Zoning Code with a minor 10-inch variance.
- 20 4. It would be difficult to comply with the literal enforcement of the Zoning Code without  
21 altered building lines.
- 22 5. Requiring changes to the roof lines and single exterior wall line would create difficulties  
23 and make construction impractical, such as structural issues, drainage, and the  
24 functionality within the home.
- 25 6. Special circumstances associated with the lot create unreasonable hardship.
- 26 7. There are special circumstances attached to the property that do not generally apply  
27 to other properties in the same zoning district.
- 28 8. This lot is an odd trapezoidal shape causing buildable area to not be square or  
29 rectangular, but angular.
- 30 9. The lot contains acute angles less than 90 degrees and odd dimensions.
- 31 10. The lot is a corner lot.
- 32 11. The southern property line is 30% shorter than the northern property line.
- 33 12. The lot contains severe tapering of the east lot line.
- 34 13. There are only four corner lots with acute and severe tapers located in the entire  
35 Hillside Overlay (to be verified by staff).
- 36 14. The setbacks are in an area of the lot that would not impose on someone else's  
37 property and would not affect site lines.
- 38 15. Granting the variance is essential to the enjoyment of a substantial property right  
39 possessed by other properties in the same zoning district.
- 40 16. Other owners in the same zoning district are able to build additions that align with an  
41 exterior wall on their lots.
- 42 17. At least fourteen immediate neighbors have exercised that right (to be verified by staff).
- 43 18. The east side of the property is unavailable for the expansion because of the taper.
- 44 19. The totality of all items 1-18 create special circumstances for the lot.
- 45 20. The variance will not substantially affect the General Plan and will not be contrary to  
46 the public interest, based on the foregoing.
- 47 21. The spirit of the Zoning Code is observed, and substantial justice done, based on the  
48 foregoing.
- 49 22. The Board finds that the spirit of the Zoning Code is observed because the 10-inch  
50 variance would not be noticeable from the street.
- 51 23. Open area, aesthetics, and utility access will still be available along the street side  
52 yard setback.  
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**ADJOURNMENT**

At 7:59 pm, Mr. Sappenfield **moved** to adjourn the meeting. Mr. Ditto seconded the motion, which passed by unanimous vote (5-0).

DocuSigned by:  
*Jennifer Robison*  
744822DF102445C  
Jennifer Robison, City Recorder

7/3/2024 | 11:50 AM MDT

Date Approved

DS

