

CITY BOARD OF ADJUSTMENT
MINUTES OF January 8, 2025

Name	Title	01/08/2025	02/05/2025	03/05/2025	04/02/2025	05/07/2025	06/04/2025	07/02/2025	08/06/2025	09/03/2025	10/01/2025	11/05/2025	12/03/2025	
		Josh Sayer	Chairman	1										
Oscar Heinrich	Vice Chair	1												
George Warmer	Member	1												
Michael Bruschwein	Member	1												
Chris Hayes	Member	1												
Dave Hagstrom	Member	1												
Brian Roush	Member	1												
TOTAL NUMBER OF APPLICATIONS 2024		01/08/2025	02/05/2025	03/05/2025	04/02/2025	05/07/2025	06/04/2025	07/02/2025	08/06/2025	09/03/2025	10/01/2025	11/05/2025	12/03/2025	TOTAL
Variance		1												1
Appeal		-	-	-	-									

Chairman Josh Sayer called the meeting to order at 6:00 PM.

Attending:

Nicole Cromwell, Zoning Coordinator; Anna Vickers, Planning Division Manager; Tate Johnson, Planner; Brenda Berns, Planning Clerk

Public Comment

Chairman Sayer opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting.

Approval of Meeting Minutes

Meeting minutes for December 4, 2024 – Approved by unanimous vote.

Disclosure of ExParte Communications - None

Disclosure of Site Visits – Board members Heinrich, Hagstrom

Disclosure of Conflict of Interest - None

Public Hearing

City Variance 1377– 2151 Lake Hills Dr – Section 27-1002.C, Table 27-1000.1 and Section 27-1803 Definition of an Accessory Use – A Variance from Section 27-1002.C and Section 1803 requiring an accessory use (private garage area) to be subordinate to a principal use (a dwelling) in terms of gross floor area to allow a new building with 2,697sq GFA

Tate Johnson, Planner, provided an overview of the variance request and the existing zoning. She explained the variance was requested to permit a private garage to exceed the size of the primary residence within the same structure in an N3 district. The neighboring properties are mostly zoned N3 and feature RV garages, are consistent with the appearance of the subject property. The garage is larger than the square footage of the primary residence, does not meet the 50/50 allowance.

Recommendation

Planning staff is recommending conditional approval based on draft findings of the review criteria for variances.

- 1) **There is a hardship with the property is not applicable to other lands in the same district.**
 - No hardship with the land per se.
 - Plan review error for zoning compliance (8/21/2024).
 - Builder proceeded with permit approved in error (9/16/2024).
 - Planning staff was notified of potential approval error (11/21/2024).
 - Builder was advised of plan review error and advised to stop construction until a resolution of the zoning compliance (11/27/24).
 - Changes to the building plan and delays in construction may create financial hardship for the builder and homeowner.
- 2) **Denying the variance might deprive this owner of similar rights enjoyed by others in the area.**
 - Applicant trusted the builder’s incorrect permission submission.
 - Builder proceeded with construction assuming compliance without verifying requirements.
 - Other properties, including in Lake Hills Subdivision, have garages larger than the 1st floor living spaces.
- 3) **Granting the variance will not confer a special privilege to this applicant.**
 - At least 10 other properties in the city have garages larger than the 1st floor living space.
 - Such configurations are not uncommon in the district.
 - Still do not meet current regulations.

CITY BOARD OF ADJUSTMENT
MINUTES OF January 8, 2025

- Staff recommends approval with conditions to improve the homes visual impact.
 - Adding at least three (3) windows along the 70' east elevation.
- 4) **Granting variance will be in harmony with the purposes of zoning and growth policy.**
 - N3 district is intended for residential neighborhoods.
 - Single family homes wide lots, and often large front-facing garages.
 - The Growth Policy aims to maintain strong, intact neighborhoods.
 - Aligns with neighborhood.
 - Matches homes with larger garages than 1st floor living spaces.

Staff recommends the eight (8) conditions from Section 27-1627.E as stated in the staff report.

Board Questions

Board member Heinrich inquired if the variance before the board was related to the garage being larger than the house. Ms. Johnson confirmed this was the case but added the other properties shown had more interior square footage while maintaining the same visual impact.

Mr. Heinrich then asked if approving the variance would set a precedent. Ms. Johnson responded no precedent would be set unless another similar mistake occurred and explained the error could be corrected by adding additional living space within the home.

Board member Warner clarified while zoning permits certain aesthetics, the city has provided a workaround that allows for more interior square footage while keeping the exterior dimensions unchanged.

Ms. Cromwell clarified to the board they were considering the use of the property, not the aesthetics.

The board then discussed the error made by Planning staff and the notification to the builder. Ms. Vickers explained the city cannot require the builder to stop construction but can only advise them to halt work, noting this situation involves an ordinance rather than a building code violation.

Board member Hagstrom concluded, given the staff's email notification to cease construction, it can be assumed construction continued. Ms. Johnson affirmed this.

Applicant's Agent:

Levi Wanner 2463 Bonita Loop; Mr. Wanner stated he designed the house specifically for the client. The square footage was on the plans, and we believed we were acting in good faith.

Board member Heinrich asked if he was aware of building codes. Mr. Wanner stated yes and thought they were adhering to the codes correctly.

Questions

Chairman Sayer asked where the 50/50 rule can be found. Ms. Cromwell responded there isn't a specific ratio listed in the code, it's our practice when both primary and accessory uses are within the same building. Accessory Use has always been considered subordinate to residential living areas.

CITY BOARD OF ADJUSTMENT
MINUTES OF January 8, 2025

In multifamily developments, garages and carports are separate from residential space. In residential settings, we apply the 50/50 rule, meaning a similar setup could have a garage on the lower level and residential space on the second level.

In Opposition:

Deanna Redfern 2143 Gleneagles – Mrs. Redfern stated she and her husband live on the opposite side street from the subject property. We strongly oppose this variance as it does not conform to the building codes, even though plans were approved in error. We observed the construction and knew it was not compliance. We built our home with a smaller garage than we wanted as we were told we could not exceed the living space of our home. We believe the 892 sq ft overage is not acceptable. When the contractor was advised to cease construction, he did not stop and in fact, contractors were working on Christmas Day. Mrs. Redfern believes the homeowners are receiving special privileges.

Pam Boner 2133 Lakehills Dr – Mrs. Boner stated she is not opposed to an RV garage but has concerns homes with larger garages will continue to be build, changing the makeup of the neighborhood.

Jerrell Boner; 2133 Lakehills Dr – Mr. Boner stated the house was almost completed before the variance was filed for and progressed at an alarming rate. Ms. Cromwell stated the builder acknowledged he was taking a risk to move forward with construction after being notified of the error.

Mr. Boner asked what the definition of ‘living space’ is. Ms. Cromwell stated it is determined how the structure is built, specifically spaces are separated by firewalls.

Board member Heinrich suggested a continuation for the applicant to come up with an additional 892 sq ft of living space. Ms. Cromwell stated the public hearing is not closed and if the board continues it for another 30 days, additional testimony could be taken until February, however the home may be closer to completion.

Board member Warmer inquired about any letters received in opposition by neighbors. Ms. Johnson clarified the board was sent the ExParte communication and provided access to the binder containing these letters for review.

Chairman Sayer closed the Public Hearing.

Ms. Cromwell stated according to the rules and state law, approving a variance requires a majority of 4 board members.

Motion

Board member Warmer made a motion to approve Variance 1377 as submitted by staff, seconded by Board member Heinrich. The vote resulted in 4 in favor and 3 against. A voice vote was conducted with the following outcomes: In favor – Board members Warmer, Sayer, and Heinrich. Opposed – Board members Roush, Bruschwein, Hayes, and Hagstrom. The motion failed 4-3, Variance 1377 was denied.

CITY BOARD OF ADJUSTMENT
MINUTES OF January 8, 2025

Other Business:

Board member Heinrich called for nominations for the position of Vice Chair and nominated Michael Bruschwein. Chairman Sayer requested further nominations from the board, and hearing none, proceeded with a vote on the nomination of Michael Bruschwein for Vice Chair. The nomination was unanimously approved.

ADJOURNMENT: The meeting adjourned at 7:01 PM.

ATTEST: Draft to be approved by a motion at the next regularly scheduled meeting.

Brenda J Berns, Planning Clerk