



Lenoir Board of Adjustment

Agenda • April 25, 2022

Meeting Information

Location

City /County Meeting Room
905 West Avenue
Lenoir, NW 28645

Time

5:30 p.m.

Board Members

Sharon Bryant, Chairperson

Leah Hamilton, Vice-Chair

Lucy McCarl

James Bradshaw

Tim Scobie

Jeff Church

Welcome!

We are glad you have joined us for tonight's meeting. The Lenoir Board of Adjustment is a quasi-judicial board comprised of citizen members appointed by the City Council in accordance with G.S. 160A-388. The Board of Adjustment is tasked with hearing variance requests and appeals of land development decisions by administrative officials.

In order to grant a requested variance, a 4/5 majority of the Board must find that the requested variance satisfies four related standards established by state statutes – competent, material, and substantial evidence in the record must support findings that:

1. The ordinance creates an unnecessary hardship
2. The hardship is peculiar to the property
3. The hardship is not self-created, and
4. The requested variance meets the intent of the ordinances, upholds public safety, and achieves substantial justice.

Each decision of the Board will be reduced to writing and be signed by the Chair, and shall become effective upon delivery of the signed decision to the applicant, property owner, and to any person who has submitted a written request for a copy.

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the Clerk of Superior Court within 30 days of the effective date of the board's decision.

General Rules of Order

If you wish to appear before the Board, please fill out an Appearance Request Form and give it to the Recording Secretary. Anyone who wishes to appear before the Board must be sworn in prior to delivering testimony or entering other evidence into the record. When the Chairperson recognizes you, state your name and address and speak directly into the microphone. ROBERT'S RULES OF ORDER govern the conduct of the meeting.

OPENING SESSION

- Determination of a Quorum
- Call to Order
- Consideration of September 27, 2021 Minutes

REGULAR AGENDA

1. 507 Yorktown Court NE

Applicant: Joel and Shirley Swanson

Owner: Joel and Shirley Swanson

Location: 507 Yorktown Court NE

V# 1-22 Variance to section 800; Special Front Yard Requirements

Recommended Action: Staff recommends approval of the variance request.

Order of Proceedings:

- Swearing in of applicant, staff, and all others who wish to provide testimony.
- Staff summary of request, opportunity for cross examination
- Testimony by applicant, opportunity for cross examination
- Testimony by others, opportunity for cross examination
- Closing of the Evidentiary Hearing/Board deliberation (discussion of four standards)/entertainment of motions
- Call for a vote

ADJOURNMENT

MINUTES
BOARD OF ADJUSTMENT MEETING
September 27, 2021
5:30 PM

LOCATION:
City /County Meeting Room
905 West Avenue

MEMBERS PRESENT:
Sharon T. Bryant, Jeff Church, Leah Hamilton, Lucy McCarl, Tim Scobie

STAFF PRESENT VIA TELECONFERENCE:
Jenny Wheelock, Hannah Williams, Lauren McKinney

A quorum was established and Chairperson Bryant called the meeting to order.

MINUTES:

Board Member Hamilton moved approval of the meeting minutes of January 25, 2021. Board Member Scobie seconded the motion, which was voted upon and passed by unanimous vote.

NEW BUSINESS:

1. Clayton Homes of Conover

Applicant: Clayton Homes of Conover
Owner: Teresa Minton
Location: 1516 Dulatown Road
V# 1-21 Variance to section 710; Special Front Yard Requirements

Recommended Action: Staff recommends approval of the variance request.

Jenny Wheelock and Matthew Vaughn were placed under oath.

Planning Director, Jenny Wheelock entered the staff report and addendum into the record and affirmed the information is true to the best of her knowledge. The addendum contains recommended conditions and clarification on the variance.

Wheelock stated that the existing mobile home is allowed to be replaced in a conforming location under the City's code. However, the existing footprint does not meet code. The requested variance would allow the replacement to maintain the existing encroachment. As detailed in the staff report the topography makes the alternative placement difficult.

The applicant, Matthew Vaughn of 1230 Conover Blvd SW, Conover NC 28613 stated if there were any other placement or options to put the home, we would do so. We are looking to keep the home in the same footprint and replace with a new energy efficient single-wide.

Chairperson Bryant closed the public hearing.

Board Member Church made a motion to approve the request based on the proposed variance and findings on page 4 of the staff report, subject to the conditions of the approval found in the addendum. Board Member McCarl seconded the motion, which was voted upon and passed unanimously.

ADJOURNMENT:

There being no further business to be brought before the Board, Chairperson Bryant adjourned the meeting at 5:55 p.m.

Sharon T. Bryant, Chair

Jenny Wheelock, Planning Director

LOCATION MAP/AERIAL PHOTOGRAPH



SUMMARY

Owner
Joel & Shirley Swanson
Applicant
Owners
Location
507 Yorktown Ct NE
NC PIN
2850662574
Project Planners
Hannah Williams, CZO
<i>Updated April 14, 2022</i>

Applicant's Request:

Applicants are requesting a variance of 28.6 ft to allow a raised walkway to be located 11.4 ft from the property line where a 40' front setback is required (Sec. 800 Table A).

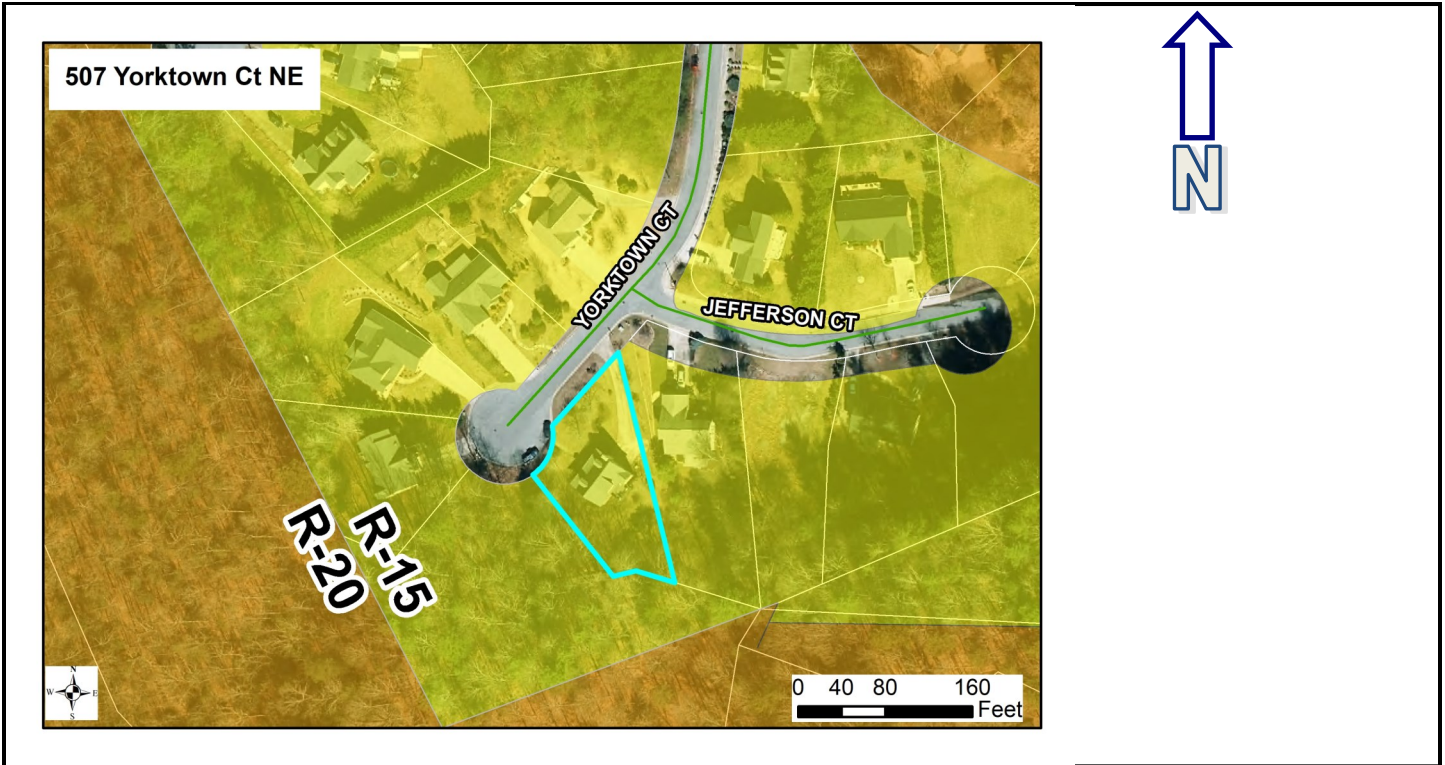
Staff Recommendation:

Approval of the requested variance. See draft findings, page 7.

Public Comment: Notices were mailed to adjacent property owners on April 14th, 2022. A sign was posted on the subject property advertising the evidentiary hearing on April 14th, 2022.

*****This request is quasi-judicial. You should not discuss this case with decision makers outside of the scheduled public hearing*****

ZONING MAP



BACKGROUND AND ANALYSIS

Intent of Variances

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment must allow for a variance from the ordinance standards creating the hardship, when specific factors are found to be true (see findings for specific standards).

Subject and Surrounding Properties

The subject property is addressed as 507 Yorktown Ct in Georgetown Estates, and is approximately 0.32 acres in the R-15 zoning district. This neighborhood is within the City Limits of Lenoir, and is served by city roads, water, and sewer. The applicants are the property owners, and they also own the adjacent, undeveloped lot. The house at 507 Yorktown Ct was built in 1995 by previous owners. The foundation of the house is situated below the grade of the road. It is designed with a walkout basement and the main floor is the second floor of the house, accessed by the exterior front steps or interior stairs.

All of the surrounding properties are in the same R-15 zone, and are developed with single family homes. The applicant's home is the only house that sits below the grade of the right-of-way in the immediate vicinity. Yorktown Court and the intersecting street Jefferson Court both end in cul-de-sacs, so most traffic through this area is local, residential traffic. Georgetown Estates is accessed by Georgetown Road, off Zack's Fork Road.

Intent of the Zoning District

R - 15 Residential (Single-family) District is intended to accommodate low density single-family residences and compatible land uses. R-15 is normally serviced by public water and sewer facilities. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

REQUESTED VARIANCE & RELEVANT CODE CITATIONS

Relevant Ordinances

Section 800, Table A: Zoning District Regulations requires a 40 ft. front yard setback for new development within the R-15 zoning district.

Standards	Residential Districts			
	R-R Rural Residential	R-20 Low Density Single Family	R-15 Single Family	R-12 Single Family
Minimum Lot Area (in sq. ft.):				
Residential Uses (1-family)	(1)	(1)	15,000	12,000
Residential Uses (2+ family)	(1)	(1)		
Non-Residential Uses	20,000	20,000	20,000	18,000
Minimum Lot Width (measured at building line)		60 ft.	60 ft.	60 ft.
Minimum Street Frontage (2)	25 ft. (8)	25 ft.	25 ft.	25 ft.
Principal Building Setback(11):				
Front yard	40ft	40ft	40ft	40ft
Side yard (3)	15ft (4)	15ft (4)	15ft (4)	12ft (4)
Street side yard	25ft	25ft	25ft	25ft
Rear yard (3)	35ft	35ft	35ft	30ft
Accessory Structure Setbacks (9)				
Side/Rear (less than 144 sq. ft.)	5ft	5ft	5ft	5ft
Side/Rear (144 sq. ft. and greater)	10ft	10ft	10ft	10ft

Staff Analysis

The applicants seek to enable access to and from the main floor of the house to the adjacent grade of the road. Their proposed solution is a raised walkway that will extend from the front porch to 11.4 ft from the back of the curb. The proposed raised walkway is 8 ft wide by 30 ft long, and would provide a level access across the sloped yard. The house is approximately 41.4 feet from the front property line. This raised walkway would encroach in the front setback by 28.6 feet.

Due to the topography, this is the minimum encroachment necessary to allow the project to move forward. This addi-

tion considerably helps accessibility even though it does not technically meet ADA standards. Aesthetically, the deck extension is more compatible with the neighborhood than an ADA ramp with switchbacks to achieve the 1:12 slope required of ramps. The walkway also creates an option for a portable ramp to be used, which is not subject to the same setbacks as permanent structures.

“Reasonable Accommodation” under Federal Laws

Under both the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA), local governments must make “reasonable accommodations” for disabled persons, when such accommodations are necessary to prevent discrimination and afford such persons equal opportunity to use and enjoy a dwelling. Locally, this most frequently comes up with requests to modify the front entries of existing homes to accommodate for wheelchair ramps (sometimes referred to as “ADA ramps”).

Some local governments treat all requests for setback encroachments as variances, sending them to the Board of Adjustment without regard to whether or not the encroachment provides an avenue for reasonable accommodation. In Lenoir, the historic approach has been to approve setback encroachments for wheelchair ramps administratively, citing the ADA and the FHA as justification.

When approving these requests, staff applies the dimensional standards of the ADA for ramps (min. width 36”, maximum slope of 1:12, handrails, etc.), and looks to approve the smallest encroachment possible to provide the accommodation (typically no wider than 5’, look for other accessible routes/doors that could accommodate a ramp without encroachment, etc.). The ramp may occasionally lead directly to a public sidewalk or other accessible adjacent public area, but most frequently connects to an off-street parking location on the same property as the dwelling. Every accommodation is decided on a case-by-case basis.

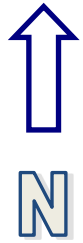


Photo shows an 8-step staircase to the left, and a switch-back ADA complaint ramp to the right.

The applicant’s request was initially reviewed as an ADA encroachment. However, there are several reasons that staff did not approve as a reasonable accommodation: 1. It’s not a ramp,

is wider than a typical ramp, and still will require at least one step down to grade, 2. There is not accessible street parking in this location, and the City cannot be obligated to maintain an accessible parking spot in this cul-de-sac, and 3. A ramp meeting ADA specifications and leading to an off-street parking place is possible – it would still encroach, but utilizing a “switch-back” design (see photo above), which is visually intrusive and overall less desirable than the proposed design. Given the factors peculiar to the property, staff recommended the applicant seek relief through the traditional zoning variance process rather than accommodation under the ADA/FHA.

SITE CONSTRAINTS



Source: Caldwell County GIS

Green lines = 5' contours

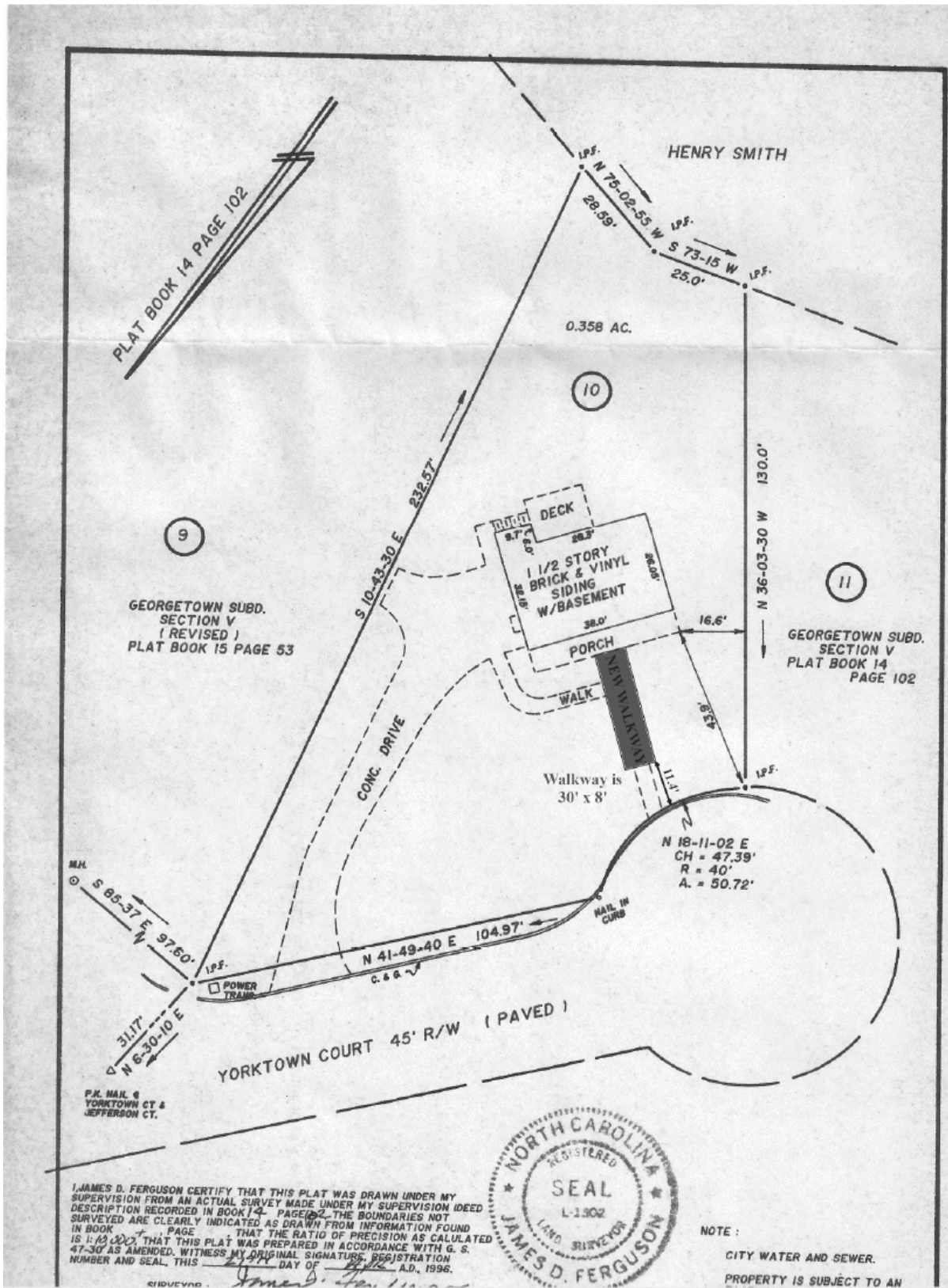
Red lines = 25' contours



Left:

“Cross-section” photo of front entry to the house and the topography of the front yard.

SITE MAP AND PROPOSED WALKWAY



DRAFT FINDINGS

No variance shall be approved unless a 4/5 majority of the Board of Adjustment finds that:

1. An unnecessary hardship is created from the strict application of the ordinance.

Staff Response: This walkway as proposed connects the main floor of the house with the grade of the road, providing direct and safe access to the main floor of the house. A strict application of the ordinance would prohibit any encroachments into the 40 ft. front setback.

2. The unnecessary hardship is peculiar to the property.

Staff Response: There is a steep slope at this homesite. The elevation decreases away from the grade of the road. The main floor of the house is on the story above the basement, and there are 8 steps to the front door. Other points of access require even more stairs. Houses in close proximity have fewer stairs and garages located on the same level as the main living spaces. While there are other homes that sit below the adjacent road, the combination of the home placed at the setback line and the steep drop of the lot away from the road makes this property particularly challenging.

3. The hardship is not self-created.

Staff Response: The existing grade and house location were in place prior to the owners' purchase of the property. These limitations are out of the control of the property owner and are not self-created.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Staff Response: The intent of the R-15 development regulations are to ensure that single-family development is compatible with adjacent single-family properties. The general intent of front setbacks are to provide uniformity and predictability to neighborhoods. They limit intensive development by requiring open space, and preserve visibility for traffic by keeping sight triangles open.

But, in a cul-de-sac where most of the lots are built-out with houses, modifications to the home's access are not likely to change the feel and form of the neighborhood. The raised walkway will fit in with the existing front porch area of the house. The proposed modification is functional and affordable for the resident. The proposed walkway is open to the sky and open on all sides, making the encroachment less dominant than a similar encroachment of enclosed living space.

By granting the variance, substantial justice is achieved by allowing the residents to access the house safely and directly. It creates the option for a portable ramp in the future, similar to what others could utilize to provide ADA access on surrounding properties. This proposed raised walkway provides the current owners the option to age in place, without barriers caused by the steep slope of the land. No public safety issues result from the placement of a raised walkway since the structure will be set back 11.4 ft from the curb of Yorktown Ct.

SITE PHOTOS



Above: Front of 507 Yorktown Ct



View of driveway and side of house

PROPOSED WALKWAY ELEVATION



APPLICANT'S RESPONSE TO VARIANCE STANDARDS

Variance Justification

An unnecessary hardship is created from the strict application of the ordinance. Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant must show *unnecessary* hardship, that is greater than a mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. The hardship must come from the application of the ordinance. *Note: Prior to 2013, the City of Lenoir held that a hardship did not meet this standard unless the applicant showed **no** reasonable use of the property without the variance. This strict standard is no longer allowed under state statutes.*

The design of the house is such that it cannot be accessed easily and safely. Stairs are required on all entries and the front walk has a dangerous 30% slope. My wife has knee issues and my son is currently in a wheelchair. A reasonable solution is the creation of a raised walkway from the front porch to a point approximately 11.3 feet from the roadway. The only hinderance to this reasonable solution is the 40 foot setback required by the city.

The unnecessary hardship is peculiar to the property. The hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from the location of the property, size or shape of the lot, or topography or water features on the site. Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances.

The other homes in the neighborhood have pull in garages on their first floor levels or direct entry to their homes. My home, dueto its location has only steep slopes and/or stairs for entry.

The Hardship is not self-created. The hardship must not result from actions taken by the applicant or property owner. Ignorance of the law is a self-created hardship — variances requested due to the owner's failure to obtain appropriate building and zoning permits prior to construction will not be approved. However, purchasing a property with knowledge that circumstances exist that may justify the granting of a variance is not considered a self-created hardship.

I did not build the house without reasonable access. I also did not realize that the walkway and stairs would eventually be a problem when I bought the house.

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. Where an ordinance expresses a clear intent, the variance cannot subvert that intent. The variance cannot harm public safety, even if the request meets the "unnecessary hardship" test. And the Board must ensure that substantial justice is achieved in the issuance of each variance — the board will consider issues of fairness for the community, neighbors, and prior applicants in their decisions.

There is no safety issue or possible harm to the public. The intent of the 40 foot setback is one of aesthetics. I have spoken to the others in the neighborhood and have found no objections to the proposal. The raised walkway will still leave approximately 11.4 feet of space between the walkway and the street to allow for city services or even a sidewalk.

ADDITIONAL STATEMENTS FROM APPLICANT

Variance Request from the city of Lenoir by Joel and Shirley Swanson at 507 Yorktown Court, Lenoir.

We propose to build a raised walkway 8 foot wide by 30 foot in length from the front porch to create a front means of egress that requires no steps or inclines.

The current walkway is steep at a 30% grade and is difficult and dangerous in the best of circumstances. The inclined walkway is a hazard when conditions are wet or icy.

After descending for some 30 feet on the walkway, one is then required to climb a set of 8 steps back up to the front porch and the entry way to the home.

There are no other entry ways into the home that do not require steps. Internally there is a 13- step stair from the basement/garage area. On the back there is a 13-step stair to the back deck and the back door.

The raised walkway will eliminate the steep sidewalk as well as the front steps making it possible to enter the home directly without steps or steep inclines.

My son had an accident and is confined to a wheelchair for the foreseeable future. His accident is the main reason we are asking for the variance at this time. In addition, we are aging and are realizing a direct entrance to the house is necessary.

I don't believe this request is unreasonable. We are simply asking to build onto our front porch into the setback claimed by the city. The porch and front stairs are already in the setback we are simply asking for it to be extended for good cause.

The walkway will look exactly the same as the front porch and none of the neighbors have raised any issues when informed of our project. None of the neighbors believed it would detract from the appearance of the neighborhood.

The city will still have approximately 11.4 feet of space between our walkway and the road. The neighborhood is complete and is a cul-de-sac with no further extensions possible. There should be no further utilities installations along this route. If the city needed extra utilities or wished to build a sidewalk, 11.4 feet should be plenty of space for that purpose.

The raised walkway will be built from #2 general grade treated lumber.

ALTERNATIVES:

There are no good alternatives to the proposed walkway.

Looking at the plat drawing, the entry way from the back deck is too far off of the ground for a ramp. It would have to be immense.

A ramp from the right side of the house (looking at the plat drawing) would not have an easy entry way to the ramp from a road or parking area.

A ramp in front of the house would need a ramp down the steep sidewalk and then another ramp up the stairs. This would encroach on the setback at least as much as the walkway and would probably need to extend into the ROW.