

*City of Las Vegas*

**AGENDA MEMO - PLANNING**

CITY COUNCIL MEETING DATE: DECEMBER 16, 2020

DEPARTMENT: PLANNING

ITEM DESCRIPTION: APPLICANT/OWNER: LAWRENCE C & CHERYL BATES

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**\*\* STAFF RECOMMENDATION(S) \*\***

| <b>CASE NUMBER</b>  | <b>RECOMMENDATION</b>                                       | <b>REQUIRED FOR APPROVAL</b> |
|---------------------|---|------------------------------|
| <b>20-0149-VAR1</b> | Staff recommends DENIAL, if approved subject to conditions: |                              |

**\*\* NOTIFICATION \*\***

**NEIGHBORHOOD ASSOCIATIONS NOTIFIED** 15

**NOTICES MAILED** 337 (By City Clerk)

**PROTESTS** 1

**APPROVALS** 0

**\*\* CONDITIONS \*\***

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## 20-0149-VAR1 CONDITIONS

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**Planning**

1. A Variance is hereby approved to allow a zero-foot side yard setback where five feet is required.
2. This approval shall be void two years from the date of final approval, unless exercised pursuant to the provisions of LVMC Title 19.16. An Extension of Time may be filed for consideration by the City of Las Vegas.
3. All necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Department of Building and Safety.
4. These Conditions of Approval shall be affixed to the cover sheet of any plan set submitted for building permit.
5. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

This is a request for a Variance to allow a zero-foot side yard setback where five feet is required for a legal, nonconforming single-family residence located at 1204 Palm Ter.

**ISSUES**

- This Variance request is the result of Code Enforcement case number (CE-20-03620).
- The existing legal, nonconforming single-family residence was built in 1955 and does not meet current Title 19 requirements for setbacks.
- The residential lot is irregular in shape.

**ANALYSIS**

The subject site is an R-1 (Single Family Residential) zoned lot that is an irregular shape, similar to a “pie” shape. The residence was built in 1955, prior to the current residential building setback requirements set forth by Title 19.06. Currently, the existing residential home does not meet the current side yard setback standard of five feet adjacent to the northern property line, and is a legal, nonconforming structure.

Adjacent to the northern property line is a three-foot wide parcel (139-29-112-153) that functions as a utility easement. Staff was unable to establish the chronological history of this parcel, but suspects the creation of this parcel resulted in the nonconformity of the subject site.

On January 22, 2020 a building permit (#R20-01050) was issued for a gas tag and test at 1204 Palm Ter. When the building inspector went to inspect the site on June 29, 2020, the inspector noted the structure the gas tag was for was not permitted and may be located within the required building setback area and failed the inspection. As a result, the applicant is now requesting a Variance in order to obtain proper building permits and maintain the room addition.

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As stated by the applicant in the justification letter, the room addition was built to house the washer, dryer and hot water heater and was constructed to match the existing residence, including the setbacks. This existing northern edge of the home is situated approximately 13-inches from the wall. The room addition was constructed to match this side configuration of the existing residence resulting in a side setback that ranges from 13-inches to four feet due to the irregular “pie” shape of the lot. The zero-foot side yard setback request results from an eave that is closer than 13-inches.

Title 19.14 addresses additions to Nonconforming Buildings, “the Director may approve additions to nonconforming buildings when the nonconformance is a result of inadequate setbacks and provided that the addition conforms to all other provisions of this Title. The addition shall not encroach beyond the encroachment of the existing building, must be located in either a side or rear yard, and must not encroach more than 50 percent. In addition, the total of all such additions or enlargements shall not exceed more than 50 percent of the size of the original footprint of the structure.” In this instance, the addition is located within the side yard and does not encroach more than 50 percent, but it does encroach by inches beyond the primary residence encroachment, thus disqualifying it for administrative approval.

Due to the applicant not seeking a building permit prior to construction that would have allowed for the adjustments to be made to the setbacks, thus resulting to conformance to 19.14 for legal, nonconforming structures, staff finds the request to be a self-imposed hardship and recommends denial of the application.

**FINDINGS (20-0149-VAR1)**

In accordance with the provisions of Title 19.16.140(B), the Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

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Additionally, Title 19.16.140(L) states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by constructing an addition to the existing single family residence without proper building permits. Obtaining the proper building permits prior to construction would allow conformance to the Title 19 requirements for setbacks. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

**BACKGROUND INFORMATION**

| <b><i>Related Relevant City Actions by Planning, Fire, Bldg., etc.</i></b> |  |
|--|--|
| 06/22/20   | The Department of Planning Code Enforcement Division received a complaint (CE-20-03620) for a non-permitted addition to the existing single family residential home at 1204 Palm Ter. The case is active as of 10/15/20.   |
| 11/10/20   | The Planning Commission unanimously voted to recommend DENIAL on a Land Use Entitlement project (20-0149-VAR1) request for a Variance TO ALLOW A ZERO-FOOT SIDE YARD SETBACK WHERE FIVE FEET IS REQUIRED FOR AN EXISTING ROOM ADDITION TO A LEGAL, NONCONFORMING BUILDING [SINGLE FAMILY RESIDENCE] on 0.16 acres at 1204 Palm Ter (APN 139-29-112-152), R-1 (Single Family Residential) Zone, Ward 5 (Crear). |

| <b><i>Most Recent Change of Ownership</i></b> |  |
|---|--|
| 12/2018                                       | A deed was recorded for a change in ownership. |

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| <b>Related Building Permits/Business Licenses</b> |   |
|---|---|
| 1955  | Construction Year.  |
| 01/22/20  | A building permit (#R20-01050) was issued for a gas tag and test at 1204 Palm Ter. The permit remains in inspection status pending this Variance request. |

| <b>Pre-Application Meeting</b> |   |
|--------------------------------|---|
| 08/17/20                       | Staff conducted a pre-application meeting via email due to the pandemic to discuss the submittal requirements for a Variance. |

| <b>Neighborhood Meeting</b>                                |  |
|--|--|
| A neighborhood meeting was not required, nor was one held. |  |

| <b>Field Check</b> |  |
|--------------------|--|
| 10/17/20           | During a routine field check, staff was able to observe the addition from the street. Due to the irregular “pie” shape of the residential lot and the existing lot fit of the main residence, one edge of the addition is less than one-foot from the side wall. Otherwise, the addition was aesthetically compatible with the main residence. |

| <b>Details of Application Request</b> |      |
|---------------------------------------|------|
| <b>Site Area</b>                      |      |
| Net Acres                             | 0.16 |

| <b>Surrounding Property</b> | <b>Existing Land Use Per Title 19.12</b> | <b>Planned or Special Land Use Designation</b> | <b>Existing Zoning District</b> |
|-----------------------------|--|--|---------------------------------|
| Subject Property            | Single Family, Detached                  | L (Low Density Residential)                    | R-1 (Single Family Residential) |
| North                       |  |  |                                 |
| South                       |  |  |                                 |
| East                        |  |  |                                 |
| West                        |  |  |                                 |

| <b>Master and Neighborhood Plan Areas</b> | <b>Compliance</b> |
|---|-------------------|
| No Applicable Master Plan Area            | N/A               |
| <b>Special Area and Overlay Districts</b> | <b>Compliance</b> |
| A-O (Airport Overlay) District – 70 Feet  | Y                 |

NE

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| <b><i>Other Plans or Special Requirements</i></b>                          | <b><i>Compliance</i></b> |
|--|--------------------------|
| West Las Vegas Plan  | Y                        |
| Trails   | N/A                      |
| Las Vegas Redevelopment Plan Area  | N/A                      |
| Interlocal Agreement   | N/A                      |
| Project of Significant Impact (Development Impact Notification Assessment) | N/A                      |
| Project of Regional Significance   | N/A                      |

| <b><i>Street Name</i></b> | <b><i>Functional Classification of Street(s)</i></b> | <b><i>Governing Document</i></b> | <b><i>Actual Street Width (Feet)</i></b> | <b><i>Compliance with Street Section</i></b> |
|---------------------------|--|----------------------------------|--|--|
| Palm Ter                  | Local Street   | Title 13                         | 51                                       | Y  |