

AGENDA MEMO

PLANNING COMMISSION MEETING DATE: MAY 22, 2008

DEPARTMENT: PLANNING AND DEVELOPMENT

ITEM DESCRIPTION: ABEYANCE - VAR-27280 - APPLICANT/OWNER: TERRY HELMS

**** CONDITIONS ****

STAFF RECOMMENDATION: DENIAL. If Approved, subject to:

Planning and Development

1. Approval of and conformance to the Conditions of Approval for Special Use Permit (SUP-27280).
2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

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**** STAFF REPORT ****

PROJECT DESCRIPTION

This is a request for a Variance to allow a proposed two story Habitable Accessory Structure (Class I) to be 25 feet in height where a height of 11.75 feet is permitted and to allow a zero-foot side yard setback where three feet is required, and to allow a 920 square-foot accessory structure where a maximum of 853.5 square feet is permitted on 0.22 acres at 809 Upland Boulevard. A companion Special Use Permit (SUP-27281) will be considered concurrently with this item. Staff recommends denial of the Variance, as there is no hardship related to the physical characteristics of the site and is a self-imposed hardship that has been determined to be incompatible with the adjacent properties.

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
04/24/08	The Planning Commission will hear a related request for a Special Use Permit to allow a proposed two story Habitable Accessory Structure (Class I) with a kitchen, on 0.22 acres at 809 Upland Boulevard.
<i>Related Building Permits/Business Licenses</i>	
1990	House Constructed
08/24/90	Permit (#9006928) for a Pool and spa
<i>Pre-Application Meeting</i>	
01/28/08	The applicant was advised of the applications needed for a Special Use Permit and a Variance to allow a proposed Habitable Accessory Structure (Class I) in an R-1 (Single Family Residential) zone, and exceed allowable height and reduce the side yard set back requirement of three feet.
<i>Neighborhood Meeting</i>	
A neighborhood meeting is not required nor was one held.	

<i>Field Check</i>	
03/21/08	The neighborhood is a typical R-1 subdivision. Homes appear close together. A park is located across the street.

<i>Details of Application Request</i>	
<i>Site Area</i>	
Net Acres	.21

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Surrounding Property	Existing Land Use	Planned Land Use	Existing Zoning
Subject Property	Single Family Residential	L(Low Density Residential)	R-1(Single Family Residence)
North	Single Family Residential	L(Low Density Residential)	R-1(Single Family Residence)
South	Single Family Residential	L(Low Density Residential)	R-1(Single Family Residence)
East	Single Family Residential	L(Low Density Residential)	R-1(Single Family Residence)
West	Park	PR-OS	C(Civic)

<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Area Plan		X	N/A
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Purpose and Overlay Districts			
A-O (Airport Overlay) District (200 feet)	X		Y
Trails		X	N/A
Rural Preservation Overlay District		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

Airport Overlay: The proposed structure will not impact the Airport Overlay.

DEVELOPMENT STANDARDS

Applicable code section 19.08

<i>Standard</i>	<i>Required/Allowed</i>	<i>Provided</i>	<i>Compliance</i>
Min. Lot Size	6,500 s.f.	9,261 s.f.	Y
Min. Lot Width	65 feet	69.50 feet	Y
Min. Setbacks			
• Front	20 feet	20 feet	Y
• Side	5 feet	5 feet	Y
• Corner	15 feet	N/A	N/A
• Rear	15 feet	37 2	Y
Max. Lot Coverage	50%	18%	Y
Max. Building Height	2 stories or 35 feet, whichever is less	15 feet	Y
Accessory Structure			
Min Setbacks			
From House	6 feet	74	Y
From Side/Rear Property Lines	3 feet	Side 0	N
		Rear 445	Y

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Maximum Accessory Building Size	853.5 square feet	920 square feet	N
Maximum Building Height (2 stories or 35 feet or height of principal dwelling, whichever is less)	11.45 feet	25 feet	N
Maximum Lot Coverage	50% of rear yard	15%	Y
	50% of entire lot (all structures)	31%	Y

ANALYSIS

The applicant proposes to construct a two-story, 920 square-foot Habitable Accessory Structure (Class I) on an R-1 (Single Family Residential) zoned parcel. Title 19.08 restricts the height of an accessory structure to two stories, 35 feet or the height of the main dwelling (whichever is less). According to the submitted elevations the height of the proposed accessory structure is 25 feet. The height of the primary dwelling is 11.75 feet. Therefore the deviation in height is 53 percent.

Title 19.08 also specifies the total allowable floor area of a detached accessory structure in a side or rear yard shall not exceed fifty percent of the floor area of the principal dwelling unit constructed on the same lot. The floor area of the principal dwelling is depicted as 1,707 square feet. Fifty percent of that area would allow an 853.5 square-foot accessory structure. The proposed Habitable Accessory Structure is shown as 920 square feet of floor area and is in excess of the allowable amount of floor area by 66.5 square feet or an increase of 7.8%.

In addition to the height and size restrictions in section 19.08, specific setbacks are stated in section 19.04 requiring a three foot side yard setback for accessory structures. A zero-foot side yard setback is depicted on the submitted site plan. The proposed building does not meet the three-foot side yard setback, height requirement and the allowable square footage and is considered a self-imposed hardship as it is the applicants choice to build a structure not in compliance with the zoning standards for the R-1 district; therefore, denial of this request is recommended. No physical site constraints exist on the subject parcel that prevents the project from meeting zoning requirements.

FINDINGS

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

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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.

Additionally, Title 19.18.070L 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 building a Habitable Accessory Structure (Class I) that is too large for the site. Alternative is to build a smaller one story structure that would allow conformance to the Title 19 zoning requirements. In view of the absence of any hardships imposed by the sites physical characteristics, it is concluded that the applicants hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 18

ASSEMBLY DISTRICT 3

SENATE DISTRICT 11

NOTICES MAILED 300

APPROVALS 11

PROTESTS 12