



## Legislation Text

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File #: 19-714B, Version: 1

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### **CITY COUNCIL AGENDA ITEM**

#### **ACTION REQUESTED:**

1. Concur with the petitioner and the Planning and Zoning Commission and pass the ordinance approving a variance to permit an enclosed porch and an attached patio to encroach into the required rear setback at the subject property located at 1322 N. Eagle Street, subject to certain conditions; or
2. Concur with staff and deny the request for a variance to permit an enclosed porch and an attached patio to encroach into the required rear setback at the subject property located at 1322 N. Eagle Street - PZC 19-1-066.

**DEPARTMENT:** Transportation, Engineering and Development

**SUBMITTED BY:** Scott Williams, AICP

#### **BOARD/COMMISSION REVIEW:**

The Planning and Zoning Commission considered this matter on July 17, 2019. The Commission voted to reject the request as recommend by staff which failed (vote: 4 in favor; 5 opposed). Should City Council recommend approval of the variance requests, staff recommends adopting the condition of approval provided in the ordinance.

#### **BACKGROUND:**

The subject property is generally located on the east side of N. Eagle Street approximately 150 feet north of 13<sup>th</sup> Avenue and is zoned R1B (Medium Density Single-Family Residence District). The property is approximately 0.14 acres and is improved with a single-family detached structure. The house was granted occupancy in March of 2017. The petitioner, Bear Hoyer, constructed the enclosed porch and attached patio thereafter without a permit. City staff was notified as to the existence of the porch and patio during the review of a variance requested for similar improvements at 1331 N. Webster Street

#### **DISCUSSION:**

##### **Planning and Zoning Commission**

The Planning and Zoning Commission considered this matter at their meeting on July 17, 2019. No member of the public spoke about the petition. The Planning and Zoning Commission inquired about the depth of the foundation. Staff responded that both structures have been inspected and architectural plans would be required for permitting. The Planning and Zoning Commission also queried the petitioner about not submitting for a variance or permit in advance of construction. The Commission moved to adopt the findings of fact as presented by the staff and reject PZC 19-1-066. The motion failed (vote in favor 4; 5 opposed).

## Staff Review

As constructed, the existing porch and patio are setback approximately 18' from the rear property line. Per code, the porch must comply with the 30' rear yard setback required in the R1B district since it is enclosed. Per Section 6-2-3:3.2 of the Municipal Code, attached patios are permitted to encroach 10' into the rear yard setback.

Therefore, the petitioner is requesting approval of a variance from Section 6-2-3:3.2 and Section 6-6B-7:1 of the Naperville Municipal Code to allow the patio to encroach 2' into the 20' rear setback and for the enclosed porch to encroach 12' into the 30' rear yard setback. The porch is 14.5' deep by 12' wide. The patio is approximately 14.5' deep by 13' wide with a curve and smaller extension ending at the southern window well.

The petitioner's responses to the Standards for Granting a Variance are included in the Development Petition. Staff has concerns with the petitioner's responses to the standards finding that:

- The primary structure was recently constructed under the current zoning code.
- The enclosed aspect of the porch structure is consistent with the primary structure's footprint; therefore, primary structure setbacks apply.
- The majority of the homes on the block, with one exception that was recently approved via a variance, do not encroach into the rear yard setback. The essential character of the community consists mainly of detached garages and other accessory structures in the required rear yard.
- The accessory structures mentioned in the submitted standards are detached in character and are governed by a different set of bulk requirements.

The setback and lot coverage requirements that are established for both attached and detached accessory structures are intended to preserve a portion of a residential rear yard for open space. If the City Council determines that the Standards for Granting a Variance are met, staff recommends adding the following condition of approval to this variance to further the intent of the Zoning Ordinance to preserve such open space:

*The 180 square feet of the enclosed porch and attached patio encroaching into their respective rear yard setbacks shall be included when calculating the percentage of the required yard that may be occupied by detached accessory structures, such that the total detached accessory structures plus the proposed enclosed porch and attached patio shall not exceed 480 square feet in size per Section 6-2-10.5.*

## Building Permits & Inspections

Through a site visit and conversations with the property owner, building staff believes there are no major building code violations with the addition. It was requested of the petitioner to apply for a building permit after the determination of the variance request. Once a building permit has been applied for and approved, permit fees would be assessed and doubled (minimum \$500) based upon the structures construction without a permit.

## Key Takeaways

- The petitioner requests a variance to allow an enclosed porch that extends 12' into the 30' rear yard setback and a patio that extends 2' into the 20' rear yard setback.
- Staff finds that the requested variances are not consistent with the underlying Code

requirements. If granted, staff recommends the inclusion of a condition of approval that includes the enclosed porch and patio in the calculation of percentage of the required rear yard that may be occupied by detached accessory structures.

- The majority of PZC did support the requested variance by voting against the motion to deny the request (vote: 4 in favor; 5 opposed).

**FISCAL IMPACT:**

N/A