

VARIANCE 2024 - 02

STAFF REPORT

To: The Northport Village Council-Acting as the Zoning Board of Appeals
From: James Dyer-Village Manager and Zoning Administrator
Re: Dimensional Variance-Haas 320 Shabwasung Street.

SUMMARY OF VARIANCE REQUESTED

Dan and Vickie Haas are the owners of a single-family residence located at 320 Shabwasung St. in the Village of Northport. The property is zoned R-2 (Village Residential) which currently requires a 20-foot setback in the front yard. The property is located at the corner of Shabwasung and M-22. The subject property is one of two residences within three hundred feet of this corner, and on the west side of the street. The property to the immediate north is also located quite close to the Shabwasung right-of-way.

The residential structure currently located on the site was constructed prior to the enactment of the existing zoning ordinance. It was originally placed about 20 feet from the right-of-way. If there were no alterations to the front façade, the existing structure would comply with the existing and recently amended zoning ordinance.

The applicants wish to update the existing structure by adding a 26' x 10' addition to the rear of the residence that would include a new kitchen, pantry, bathroom, mechanical room, and a porch. These proposed updates would all occur within the currently permitted building envelope and comply with the existing zoning ordinance.

However, the elevation facing the street is currently quite plain. Originally, simple, uncovered, concrete steps provided access to the front door facing Shabwasung Street. To enhance the building elevation facing the public the applicants propose to construct a 5'11" by 23'5" covered front porch. They assert that the porch would enhance the appearance of the existing residence, provide outdoor space and protection of the entranceway to the residence, and maintain consistency of appearance with other nearby residences.

It is my opinion that granting the variance would make the property a lawful conforming use, permitting the reconstruction and expansion shown in the application.

RECOMMENDATION

I recommend approval of the variance, as requested. It complies with the general and specific conditions of Article 20, section 20.09 Zoning Ordinance, as indicated below. Also, granting the variance would permit a rehabilitation project that is consistent with the existing condition of surrounding properties and would enhance the general appearance of the neighborhood.

REVIEW OF VARIANCE CRITERIA

Variances are addressed by section 20.09 of the current Zoning Ordinance. This section authorizes the Northport Village Council, acting as the Zoning Board of Appeals, to grant a variance from the specific dimensional requirements imposed by the ordinance. The variance request satisfies all basic conditions of the ordinance and meets two of the three special conditions otherwise required.

Basic conditions are as follows. A variance request must meet all five of these conditions:

- a. **Will not be contrary to the public interest or the intent and purpose of this Ordinance.** - The variance application satisfies this condition. Dimensional requirements, particularly a front yard setback, promote uniformity of appearance in the streetscape. In this case, as can be seen from the

aerial photograph included with this report, there is an established streetscape. The property to the immediate north is currently located closer to Shabwasung Street (approximately 12 feet from the Shabwasung right of way, at its closest point) than the proposed variance. The property to the south is a large vacant property bordering Vincer Way. This property is not likely to be developed with frontage on Shabwasung Street. Properties further to the north are both vacant, and farther from the right-of-way than the variance. The property on the east side of Shabwasung is currently compliant with the 20-foot setback. However, the proposed variance is consistent with the appearance of the surrounding neighborhood and granting a minimal exception to the 20-foot setback requirement would not be detrimental to the public interest or violate the intent and purpose of the zoning ordinance. Granting the variance is not contrary to the public interest of the intent and purpose of the ordinance.

- b. **Shall not permit the establishment within a District of any use which is not permitted by right within the zoning district or any use or dimensional variance for which conditional use permit is required.** The variance also satisfies this condition. The applicants do not request a change of use, the existing use is consistent with, and permitted by the zoning district, and the surrounding properties are residential. As such the first clause of the sentence is irrelevant. As for dimensional variances there are no conditional dimensions within this zoning classification, so the second clause of the sentence is also irrelevant. Regardless, the proposal variance does not grant, nor is it based upon, a right it could be applied to other properties within the R-2 zoning classification. Granting the variance does not create a special right and is consistent with the intent and purpose of the ordinance.
- c. **Will not cause a substantial adverse effect upon the property values in the immediate vicinity or in the district in which the property the applicant is located.** There is nothing more subjective than a determination of the impact on property values when a change is contemplated at an adjoining property. A review of the plans demonstrates that the applicant contemplates a restoration of the property in a manner that would enhance the appearance and “street appeal” of the subject property. The addition of an exterior covered porch, to an otherwise plain exterior would only serve to enhance rather than detract from the value of this property. This would more likely than not have a positive impact on surrounding properties. Granting the variance is therefore consistent with the intent and purpose of the ordinance.
- d. **It is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.** The section dictates that a variance should not be granted when it would be more appropriate to formulate a new general rule that could apply district wide. In this case, granting the variance would be more appropriate than permitting a 12-foot setback districtwide. The conditions that prompt granting this variance are unique to this property, particularly the fact the applicants wish to reuse, but enhance, an existing structure, in a manner that is consistent with its neighbor to the north. While this did that desire may be in part “self-created,” and might argue against granting a variance, encouraging this sort of adaptive reuse should be encouraged, when it is consistent with the neighborhood. This unique set of facts does not speak in favor of a general regulation but supports a case-by-case review and permission as suggested here. Granting the variance does not create a general exception that could be applied districtwide. It is therefore consistent with the intent and purpose of the ordinance.
- e. **Will relate only to property that is under control of the applicant.** In this case, this basic condition is related to item (d), above. Granting this variance is limited to the unique conditions specific to the property in question. In this instance, at the time of original construction, it was common for a ranch style house to have a simple front façade. Center entry concrete steps were common. That is no longer the case. Updating the exterior appearance of this residence not only will enhance the value of the subject property, but the surrounding neighborhood as well. But the owner is stuck with the decision to place the house in its current location. If this were new construction, it would be possible to place the proposed structure in a building envelope with

appropriate setbacks, as required by the Ordinance. The impracticality of moving the house is a unique situation, not created by the variance applicant, and in existence both before the current zoning ordinance was in place, or the variance was requested. This uniqueness satisfies this condition and granting the variance is consistent with the intent and purpose of the ordinance.

Since this variance meets all five basic conditions required by section 20.09, the ZBA must also find that the variance meets at least one of the special conditions set forth in section 20.09 (2) (a-c). This variance meets subparagraphs b, as indicated below:

b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape or topography of the property involved or to the intended use of the property, the do not generally apply to other property or uses in the same zoning district. Such circumstances or condition shall not have resulted from applying this ordinance.

As indicated above there are already established circumstances relevant to the front yard setback that are exceptional or extraordinary, when considering the appropriateness of applying any appropriate particular setback to the subject parcel. As noted above the proposed variance would create a consistent front yard setback when compared to the property immediately to the north. Also, the applicant's intended use of the property, and the dimensional limitations presented by adaptive reuse of an existing structure constitute a physical condition sufficient to grant a variance. Obviously, the decision to place this structure in its current location occurred prior to the adoption of the ordinance, and it is not attributable to the applicant's choice. Since the Village should encourage adaptive reuse of existing structures, and the circumstances supporting this variance would not apply to vacant property, it is in my opinion both an extraordinary circumstance and a physical condition of the property that is unique to this parcel and not of the applicant's making justifies this variance. The proposed variance does not necessarily apply district wide, and justifies granting of the variance as requested.

For these reasons, granting the variance is consistent with the objectives of the ordinance, as it relates to consistency of front yard setbacks. I recommend that the Village Council, acting as the Northport Zoning Board of Appeals, grant the variance as requested.