



## STAFF REPORT

**TO:** Planning and Zoning Commission  
**FROM:** Laura Chamberlain, Consulting Planner, HKGi  
**DATE:** May 19, 2021  
**SUBJECT:** Variance for 4' Side Yard in R-C district  
**APPLICANT:** Darek Davidson  
**OWNER:** Darek Davidson  
**LOCATION:** 16 2<sup>nd</sup> Street Northwest ; PID No. 241000980  
**MEETING DATE:** May 24, 2021  
**COMPREHENSIVE PLAN:** Low Density Residential  
**ZONING:** R-C Residential-Commercial Mixed Use District

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## BACKGROUND

The applicant and owner, Darek Davidson, has applied for a variance from the side yard setback on the property at 16 2<sup>nd</sup> Street Northwest. The applicant was recently approved for a building permit by the City and began construction of the building. The site plan submitted with the building permit showed the proposed building meeting the side yard setbacks of 6' 6" on each side of the house. However, the building plans approved with the permit were based off of incorrect measurements, resulting in a building that is only 4' 2" from each side lot line. As the foundation for the building is already poured and the materials already sized off-site according to the building plan, the applicant is requesting a variance from the side yard setback in the R-C district.

## REVIEW PROCEDURE

### Variance

City Code § 154.02.24 states that a variance may be granted to provide relief to a property owner where strict enforcement of the zoning code would cause a practical difficulty and where it can be demonstrated that such a variance will be in keeping with the spirit and intent of the code.

In its consideration for a variance request, the Planning and Zoning Commission shall consider the following questions when making their recommendation to the City Council:

- (1) Whether or not exceptional, unique or extraordinary circumstances apply to the physical surrounding, shape or topographic conditions of the parcel of land that result in practical difficulties for the owner?

- (2) Whether or not the Variance requested will alter the essential character of the locality?
- (3) Whether or not granting the Variance requested will:
  - (a) Impair an adequate supply of light and air to adjacent property?
  - (b) Substantially increase congestion in adjacent public streets?
  - (c) Endanger the public safety?
  - (d) Substantially diminish or impair property values within the vicinity?
- (4) Whether the Variance requested is the minimum variance that would alleviate the practical difficulties?
- (5) Whether or not the Variance requested is consistent with the intent of this Chapter and the City's Comprehensive Plan?
- (6) Whether or not the Variance requested provides for a reasonable and practical solution that eliminates the practical difficulties?

In its consideration of a variance request, the City Council shall make the following findings:

- (1) The proposed use is not prohibited in the zoning district in which the subject property is located.
- (2) The Variance must be in harmony with the general purposes and intent of this ordinance.
- (3) The terms of the Variance must be consistent with the Comprehensive Plan.
- (4) The landowner must show that the Variance is necessary to alleviate the practical difficulties in complying with the official control.

“Practical Difficulty” as used in connection with the granting of a Variance shall include all the following:

- (1) The property owner proposes to use the property in a reasonable manner that is not otherwise not permitted by an official control;
- (2) The plight of the property owner is due to circumstances unique to the property, not created by the property owner;
- (3) The Variance, if granted, will not alter the essential character of the locality;
- (4) The need for the Variance involves more than economic considerations.
- (5) “Practical Difficulties” also means and includes, but is not limited to, inadequate access to direct sunlight for solar energy systems

### **60-Day Land Use Application Review Process**

Pursuant to Minnesota State Statutes Section 15.99, local government agencies are required to approve or deny land use requests within 60 days. Within the 60-day period, an automatic extension of no more than 60 days can be obtained by providing the applicant written notice containing the reason for the extension and specifying how much additional time is needed. For the purpose of Minnesota Statutes Section 15.99, “Day 1” for the variance application was determined to be May 5, 2021. The City's deadline for action is on July 4, 2021.

## **Public Hearing**

City Code § 154.068 requires a public hearing for review of the variance be held by the Planning and Zoning Commission. The public hearing notice for the variance was published in the Dodge County Independent and posted on the City website. The variance public hearing notice was mailed to all affected property owners located within 350 feet of the subject properties.

## **DISCUSSION**

Prior to the approved building permit by the applicant, the property had been the site of a fire, which damaged the original building on the property. Initially, the applicant sought to utilize the previous building's foundation and basement, however, upon excavation, the applicant found that the water table was too high and that the new structure would have to be built slab-on-grade. This led to an adjustment of the building plans which widened the structure to accommodate more bedrooms on the second story, as no basement bedrooms would be feasible. These updated building plans were approved by the City; as noted earlier, the measurements of the building width on the building plans (57' 8") was different than the measurements of the building width shown on the Site Plan (53").

The applicant was not aware of the discrepancy between the approved building plans and the site plan (nor did the city pick up the discrepancy in issuing the building permit) until this spring, when significant portions of the building had already been built. As the building permit was already approved, the applicant is seeking a variance of the setbacks "after-the-fact." If a variance is not approved, the alternatives would be reconstruction of the already-built elements of the structure which could mean starting over and building new.

## **STAFF RECOMMENDATION**

Staff recommends that the Planning and Zoning Commission make recommendation to the City Council to approve the variance for the side yard setbacks for the single-family detached dwelling at 16 2<sup>nd</sup> Street NW to allow for setbacks of 4.0' on each side yard in the R-C district with the following conditions:

- (1) The applicant shall work with the City Building Inspector to ensure that the side walls meet fire safety code, which may include fire-rating the walls.
- (2) This approval does not apply to any other zoning standards on the property; the applicant is advised that the maximum impervious surface coverage allowed in the R-C is 50% and compliance may require the removal of existing or planned impervious coverage to be under this maximum.

In recommending approval of the variance, staff offer the following findings of fact:

- (1) The proposed use, a single-family detached dwelling, is an allowed use in the R-C zoning district in which the subject property is located.
- (2) The applicant is using this property in a way that is permitted by the zoning ordinance, therefore the request is in harmony with the intent of the zoning ordinance
- (3) The use of the property as a single-family detached dwelling is consistent with the land use guidance from the Comprehensive Plan.

- (4) The existing character of the neighborhood has a number of buildings that do not meet yard setback standards; therefore the variance would not alter the essential character of the locality.

### **CITY COUNCIL REVIEW**

In the event a recommendation is received from the Planning and Zoning Commission, it will be forwarded to the City Council for action at an upcoming meeting.

### **ATTACHMENTS**

- A. Application for side yard variance and applicant narrative, dated May 5, 2021
- B. Variance Site Illustration, created by HKGi for reference, dated May 19, 2021

# **SPECIAL PLANNING COMMISSION MEETING**

**MAY 24, 2021**

**6:00 O'CLOCK P.M.**

1. Call to Order
2. Public Hearing Davidson Variance
3. Adjourn



City of Kasson  
401 Fifth Street S.E.  
Kasson, MN 55944-2204  
507.634.7071  
(Fax) 507.634.4737  
[www.cityofkasson.com](http://www.cityofkasson.com)

## Land Use Application – Cover Sheet

### Application Type (Check All that Apply)

- |  |   |
|--|---|
| <input type="checkbox"/> Site Plan Review (§ 154.066)                                  | <input type="checkbox"/> Minor Subdivision (§ 153.050-054)    |
| <input type="checkbox"/> Conditional Use Permit (§ 154.067)                            | <input type="checkbox"/> Concept Plan (§ 153.065-067)         |
| <input checked="" type="checkbox"/> Variance (§ 154.068)                               | <input type="checkbox"/> Preliminary Plat (§ 153.080-085)     |
| <input type="checkbox"/> Zoning Amendment (§ 154.069)                                  | <input type="checkbox"/> Final Plat (§ 153.095-098)           |
| <input type="checkbox"/> Establishment of a Planned Unit Development (PUD) (§ 154.070) | <input type="checkbox"/> Subdivision Variance (§ 153.110-114) |

### Application Information

Date Submitted 5-5-21		Planning Case Number (City will fill out)	
Property Address 16 2nd Street NW		PID #	
Applicant DAREK DAVIDSON	Phone # 507-258-0455 Email bydesignbaui@designconnection.com	Address 305 3rd Ave NE Byron MN 55920	
Property Owner DAREK DAVIDSON	Phone # Email	Address	
Engineer/Architect The Design Connection	Phone # Email	Address Rochester	
Use of Property Current: Proposed: Single Family Home	Land Use Designation Current: Proposed:	Zoning District Current: RC Proposed:	
Application must be signed by all owners of the subject property			
Signature of Property Owner(s) 		Date 5-5-21	
The undersigned applicant hereby represents upon all of the penalties of law that all statements herein are true and that all work herein mentioned will be done in accordance with the ordinances of the City of Kasson, the State of Minnesota, and any other applicable laws and regulations.			
Signature of Applicant 		Date 5-5-21	

## Variance Specifics

Zoning District: RC

Zoning Standard	Required	Requested (or existing)	Variance
Lot Area	<del>6,100</del> sf.	sf.	sf.
Lot Width – Building Line	ft.	ft.	ft.
Lot Width – Street Line	ft.	ft.	ft.
Front Yard Setback	ft.	ft.	ft.
Side Yard Setback	6.5 ft.	4' 10" ft.	<del>4' 10"</del> 2' ft.
Side Yard Setback	6.5 ft.	4' 10" ft.	2' ft.
Rear Yard Setback	ft.	ft.	ft.
Building Height	ft.	ft.	ft.
Impervious Surface	% sf.	% sf.	% sf.

## Practical Difficulty

- "Practical Difficulty" as used in connection with the granting of a Variance shall include all the following:
  - The property owner proposes to use the property in a reasonable manner that is not otherwise not permitted by an official control;
  - The plight of the property owner is due to circumstances unique to the property, not created by the property owner;
  - The Variance, if granted, will not alter the essential character of the locality;
  - The need for the Variance involves more than economic considerations.
- "Practical Difficulties" also means and includes, but is not limited to, inadequate access to direct sunlight for solar energy systems

## Applicant Narrative:

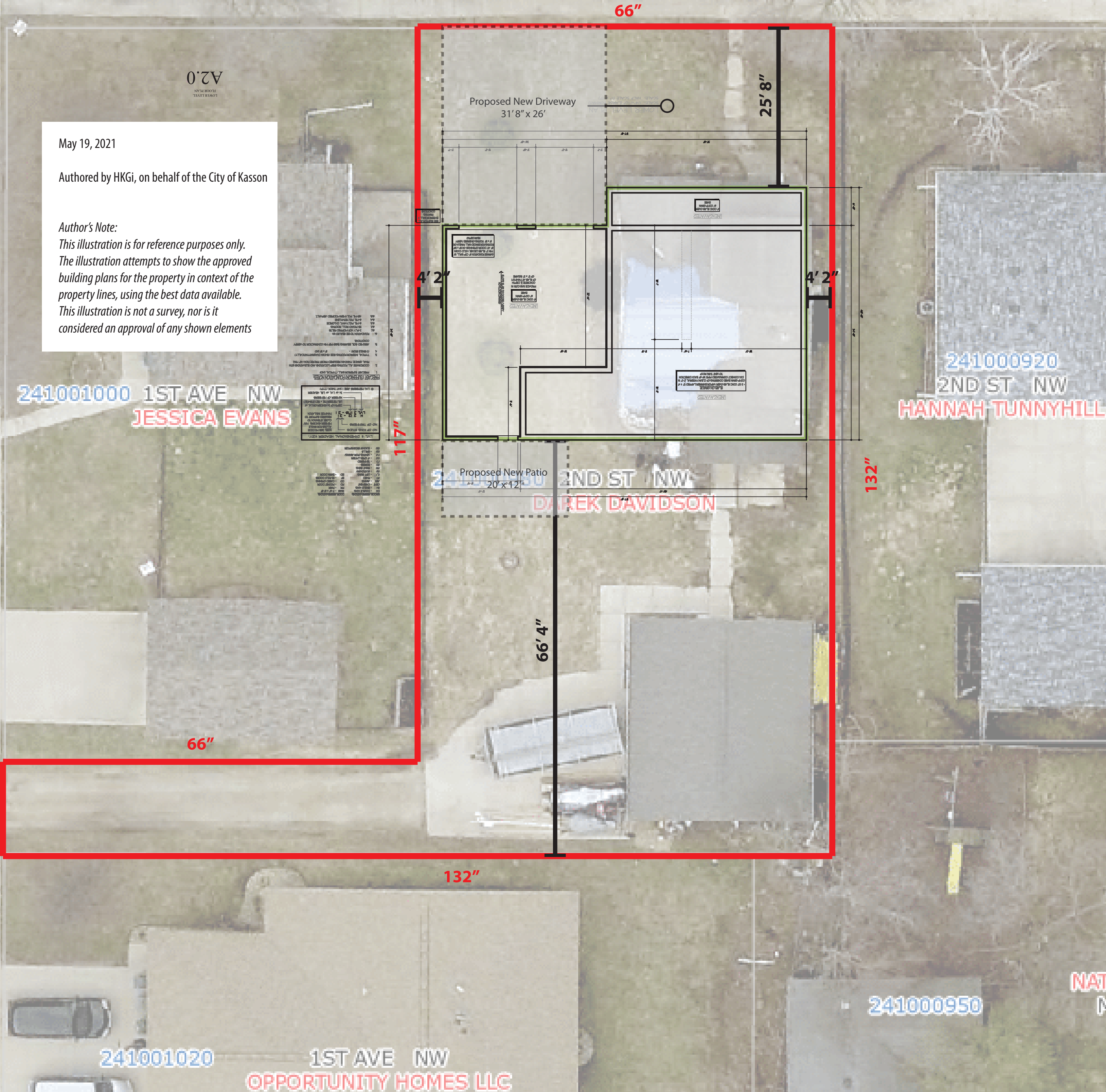
Provide a written explanation as to why the situation of the subject property creates a practical difficulty and requires a variance from the provisions of Chapter 154 Zoning of the City Code

~~Overlooked~~ This was a oversight by All Associated with plan beginning with the draftsman. The house plan was to be to use maximum space in width of lot with the proper 6'6" side set back. Some how it got missed that the house was drawn wider than 53' to meet Reg. on a 66' lot. The house was originally drawn to have a basement but once existing house was demoed we hit the water table @ 6'6" so we had to change ~~to~~ to slab on grade. So when we laid out for excavation we discovered the

Issue of being too wide. The Foundation and Rove Framing is a panelized method of construction and has been built and purchased so it would be unable to be modified at this point. ~~211~~



# Site Illustration - 16 2nd Street Northwest



May 19, 2021

Authored by HKGi, on behalf of the City of Kasson

*Author's Note:*  
This illustration is for reference purposes only.  
The illustration attempts to show the approved building plans for the property in context of the property lines, using the best data available.  
This illustration is not a survey, nor is it considered an approval of any shown elements

231 NW

A2.0  
BLOCK PLAN  
DATE 11/1/2011

66"

25' 8"

4' 2"

4' 2"

241001000 1ST AVE NW  
JESSICA EVANS

241000920  
2ND ST NW  
HANNAH TUNNYHILL

117"

241000930 2ND ST NW  
DAREK DAVIDSON

132"

66' 4"

66"

15"

132"

241001020

1ST AVE NW  
OPPORTUNITY HOMES LLC

241000950

NATHAN  
M...