



Zoning Board of Adjustment Meeting Agenda

Wednesday, May 3, 2023 - 4:30 PM

Newton City Hall - Council Chambers
101 W 4th St S
Newton, IA 50208

View this Meeting: Mediacom Channel 12/85/121.12 or www.newtongov.org/cablecast

- I. Call to Order / Roll Call
- II. Review of Minutes of Previous Meeting:
 - 1. February 1, 2023
- III. Public Hearing
 - 1. V23-2: Front yard setback variance for a detached accessory building at 1500 North 3rd Avenue West. Machel Vos, applicant.
- IV. Old Business
- V. New Business
- VI. Adjourn

ADA Compliance: *The City of Newton is pleased to provide reasonable accommodations, in compliance with the Americans with Disabilities Act, for those individuals or groups who require assistance in being able to participate in the meeting. Please contact the Community Development Department at least 24 hours in advance of the meeting by calling 641-792-6622 to arrange for accommodations to be provided.*

Chair: Bev Rossow; **Vice Chair:** Noreen Otto; **Members:** Gregg Hanson, Lynette Birkenholz, John Billingsley

Minutes of Meeting Zoning Board of Adjustment Regular Meeting

February 1, 2023

ROLL CALL: Board members present: Billingsley, Hanson, Otto, Rossow
Board members absent: Birkenholz

STAFF PRESENT: Brian Dunkelberger, City Planner
Craig Armstrong, Development Specialist

A quorum being present, Chair Rossow called the meeting to order at 4:31 PM

Minutes

The Board reviewed the minutes of the previous meeting from January 4, 2023. **Motion** by Otto, **seconded** by Billingsley to approve the minutes as written. **Voice vote**: approved, 4-0.

Public Hearing

- A. CU23-1: Conditional Use Permit for an addition to an accessory structure with a footprint exceeding 1,000 sq. ft. at 907 W. 8th St. N. (located in R-2: One and Two-Family Residential and A-1: Agricultural zoning districts). Stephen Ezell, applicant.

Dunkelberger reviewed the prepared staff report and shared maps and images of the proposed structure. Dunkelberger also shared two submitted comments from neighbors who wished to remain anonymous.

The first neighbor called on 1/31/2023 to voice strong opposition to the proposed building addition due to a history of noise issues and disruptions within the neighborhood. Some past noise issues mentioned include engine revving and burnouts/tires squealing up and down W. 8th St. N., maintenance work being done at all hours of the night, and music being played at high levels. The yard is also reverting back to being a junk yard and was only cleaned up a bit because the Community Services Officers tagged the property. Said neighbor is concerned that this building addition would exacerbate those issues.

Neighbor who wishes to remain anonymous called on 2/1/2023 to voice strong opposition to the requested conditional use permit. Said neighbor was concerned that the large additional structure would worsen the issues that have been occurring at the subject property. Such issues involve excessive noise, unsightly exterior storage, too much traffic in and out, burnouts, vehicles blocking the road, etc.

Otto asked about the neighborhood feedback and history of issues at the subject property. Billingsley inquired about the use of the property and home occupations rules and regulations. Discussion ensued regarding parking rules, exterior storage and zoning, and home occupation rules. Rossow inquired about enforcement of home occupation rules and regulations. Billingsley asked if some enforcement activity drove the application. Dunkelberger confirmed and described the process for nuisance enforcement and his communications with the applicant prior to the meeting.

Billingsley asked if the motivation behind the building was to hide all the “stuff.” Dunkelberger shared that to the owner’s credit, he relocated or removed the stuff that was tagged as a nuisance violation in 2021, but

yes, the owner had shared that the building would be used for both additional storage space and space to conduct his business operations. Billingsley summarized that a home occupation is allowable as long as it is done right. Dunkelberger confirmed.

A representative for the applicant in the audience mentioned something and was invited to speak, but declined the opportunity.

Hearing no additional questions or comments, Chair Rossow called for a motion to close the public hearing.

Motion by Hanson, **seconded** by Otto. **Voice vote**: Approved 4-0.

Rossow stated that in light of the home occupation not following the guidelines, she did not feel the large building addition could be approvable at this time.

Billingsley stated that he was unsure how he felt about the application. He assumed that staff originally viewed the proposed building addition as a possible remedy to the past issues, and he asked what information caused the recommendation to change. Dunkelberger shared that the feedback received from the neighborhood and additional information learned about the home occupation activities at the property were the reasons for the change and because such issues violate the four required criteria for granting conditional use permits.

Otto shared her primary concern revolved around the sheer size of the new structure and home occupation issues. Her understanding of home occupations was that the residence was the primary use and the accessory structure/home occupation should be ancillary. With the proposed addition, that would flip that at this property. Dunkelberger looked up the total size of the residence to provide context to this thought. The residence was under 1,000 sq. ft. while the total footprint of the accessory structure would be 4,000 sq. ft. Board members discussed this concern and the fact that the property is located within a residential neighborhood, but if the business were within a commercial or industrial zone it could be approvable.

Discussion regarding the home business and operations occurring in the future without the addition. Members conversed about the proposal and the total size, possible alternatives if this application were to be denied, and how the home business could fit into the neighborhood. It was made clear that entrepreneurship should never to be discouraged, but the residence is the primary use and negative impacts to the neighborhood needed to be avoided. Hanson asked if staff could reach out to the applicant after the meeting to explore alternative options. Dunkelberger confirmed. Billingsley shared that the application broke down on the second listed criteria for granting conditional use permits.

Motion by Billingsley to deny the CU23-1 application, citing the logic discussed during the meeting and referencing how the four required criteria for granting conditional use permits as defined by the Newton Zoning Code were not achieved, and to direct staff to reach out to the applicant after the meeting to consider alternative options in the future. **Seconded** by Otto. **Roll call vote**: Motion to deny, approved 4-0.

Old Business

None.

New Business

None.

Motion by Otto to adjourn the meeting, **seconded** by Billingsley. **Voice Vote**: approved, 4-0. The meeting was adjourned at 5:01 PM.

Zoning Board of Adjustment Staff Report: V23-2

Applicant:	Machelle Vos
Proposal:	Variance to allow encroachment of 24' x 40' detached accessory building in required front yard setback area
Location:	1500 N. 3 rd Ave. W. (Parcel ID: 0833103019)
Current Use:	Single-Family Dwelling
Current Zoning:	R-2: One- and Two-Family Residential

Proposal and Background:

The applicant, Machelle Vos, has submitted a variance application on behalf of her husband, Jan, requesting authorization of a 24' x 40' detached accessory building encroaching into the required front yard area. Said building is approximately between 2' - 4' from the front property line, thus failing to meet the minimum 25' building setback required by the R-2 zoning district.

The following timeline is a general sequence of events regarding the subject property:

- **5/12/2022**: Stop Work Order was posted on the property by Mel Duncan, Newton Building Official (copy included for review) after a new slab and driveway was observed.
- **3/23/2023**: The hired contractor, Shawn Swank, called Mel to discuss the project. Mel and Shawn met on site to review the already-poured concrete slab to determine if it was buildable.
- **4/6/2023**: Shawn visited the Community Development Department to submit a building permit application for the building. Brian Dunkelberger, Newton City Planner, informed Swank that the application was not approvable due to the setback requirement and provided options to remedy the situation. Swank shared that he would visit with the property owner to determine the best path forward.
- **4/11/2023**: Dunkelberger discussed options with Machelle Vos and shared that work on the building could not begin until proper approvals were in place so as to prevent anything needing to be removed in the future if denied.
 - Also attempted to call Swank twice with no success. Emailed on 4/12/2023 informing him to stop all work until further notice.
 - Construction of the building began regardless.
- **4/18/2023**: Variance application submitted.
- **4/20/2023**: Spoke to Machelle Vos again and reiterated that all work must stop. No additional progress has been evident since.

Based on this timeline and the actions taken by the property owner and contractor, a concrete slab, a new driveway approach in the public right-of-way, and framing of the accessory building have already been constructed prior to any city approvals.

Analysis:

Although the garage frame has already been erected, the Board should not let that fact interfere with the evaluation of this application. The appropriate first step in seeking relief from the adopted setback rules for the detached structure at its proposed location *would* have been this variance request prior to any construction activity. Then, if a variance is granted by the Zoning Board of Adjustment, a building permit could have been issued for the slab and structure.

1500 N. 3rd Ave. W. is located within an R-2: One- and Two-Family Residential zoning district. The Zoning Ordinance stipulates that properties in this zone must meet the following minimum size and density regulations:

- Front yard building setback: 25 feet
 - *20 feet at this property due to established historical setback
- Side yard setback: 8 feet on each side
- Rear yard setback: 25 feet
- Maximum lot coverage: 40%
- Maximum rear yard building coverage: 40%

If granted and the proposed garage is allowed at its current location, this would result in a front yard setback at *1500 North 3rd Avenue West* of less than 4' in the front yard, a 0' setback between the attached deck and detached garage, and a rear yard building coverage exceeding the maximum allowed 40%.

The intent behind this variance requesting authorization of an accessory building in the front yard area is to ensure compatibility with the neighborhood and to provide an opportunity for neighbors to offer direct feedback regarding the structure and its location on the property. To the extent that citizens and surrounding property owners are interested in the garage and how its use would function in the neighborhood, design matters *can* be part of the Board's discussion (e.g., screening requirements, size and/or location restrictions/reductions, etc.).

A plot plan and building specifications were provided by the contractor along with answers to the six variance questions by the applicant. Also, an aerial image and a few photos of the property are provided within this report.

Below is a listing of front yard residential setback variance requests approved by the Newton ZBA from the past decade. **While these previous variances were approved to allow encroachments into required front yards, none were approved after a building or addition was already constructed nor did they approve a distance as small as this request.**

1. V17-1: 15' front yard setback for garage addition at 816 W. 11th St. S. (R-2: One- and Two-Family Residential zoning district)
2. V17-2: 15' front yard setback for new home at 1124 S. 5th Ave. E. (R-3: Mixed Residential zoning district)
3. V17-4: 16' front yard setback for covered but unenclosed front porch (R-3: Mixed Residential zoning district)
4. V18-1: 8' front yard setback for attached garage and home addition at 1314 Glenway Drive (R-3: Mixed Residential zoning district)

Criteria for granting variances:

The Zoning Ordinance includes specific criteria for granting variances. According to the ordinance, answers must be “yes” to the first three questions and “no” to the last three to grant a variance and these are listed below. For each question, the Board should try to determine what, if anything, distinguishes this case from other projects in the same zoning classification and if the applicant provided sufficient answers (enclosed within the packet).

1. Do the physical surroundings, shape, or topographical conditions of the specific property involved result in a particular hardship upon the owner, other than a mere inconvenience or loss of revenue?
2. Is the variance request based on conditions that are not applicable in general to other properties in the same zoning classification?
3. Does the proposed variance comply with the spirit and intent of the restrictions imposed by the zoning ordinance?
4. Did the present owner create the alleged difficulty or hardship?
5. Will granting the variance be materially detrimental to the public welfare or injurious to the neighborhood?
6. Will granting the variance impair an adequate supply of light and air to adjacent property, increase the congestion, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood?

Therefore, the role of the Zoning Board of Adjustment is to determine the appropriateness of an accessory building at this property encroaching into the required 20' front yard area and to ensure that it does not unreasonably or negatively interfere with the use and enjoyment of another's property.

Public Notice:

Notice of the meeting was mailed to neighbors and was also published in the Newton Daily News on Tuesday, April 25, 2023. No comments were received as of the date this report was prepared, but if comments are received before the meeting staff will share them at this point.

Recommendation:

Potential impacts extending beyond property boundaries may include aesthetic considerations, traffic sightlines, and establishing precedent for future variance requests. Staff recommends that the Zoning Board of Adjustment only grant the variance if the answers provided to the six legal test questions are to the Board's satisfaction. Staff finds that it would be a challenge to claim that the current property owner did not create the alleged



difficulty or hardship. The subject property was in violation of several requirements prior to this application, so this variance request is an action being pursued to retroactively attempt to remedy one such violation. As always, neighborhood concerns and questions should be addressed so as to avoid anything that is contrary to the public interest. The findings of the Zoning Board of Adjustment shall be a determination to either approve, conditionally approve, or deny this variance.



According to the ordinance, in order to grant the variance, the answer must be “yes” to the first three questions, and “no” to the last three:

1. Do the physical surroundings, shape, or topographical conditions of the specific property involved result in a particular hardship upon the owner, other than a mere inconvenience or loss of revenue?

Yes, the lot is a corner lot with a house that is sitting at a slight angle on the lot. This has made the layout of the lot very difficult and the classification of the sections of the lot difficult.

2. Is the variance request based on conditions that are not applicable in general to other properties in the same zoning classification?

Yes, other properties in the same zoning classification are not enduring the restrictions placed on this lot because of the placement of the main structure on the lot.

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3. Does the proposed variance comply with the spirit and intent of the restrictions imposed by the zoning ordinance?

Yes, the variance does comply with the spirit and intent of the restrictions imposed.

4. Did the present owner create the alleged difficulty or hardship?

No, the difficulty was created when the lot was created, yards were classified, and setback created.

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5. Will granting the variance be materially detrimental to the public welfare or injurious to the neighborhood?

Absolutely not.

6. Will granting the variance impair an adequate supply of light and air to adjacent property, increase the congestion, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood?

It will not.

52'

← 8' →

New garage

Deck

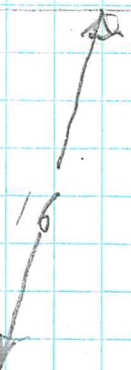
garage

House

60'



112'



4.2

82'

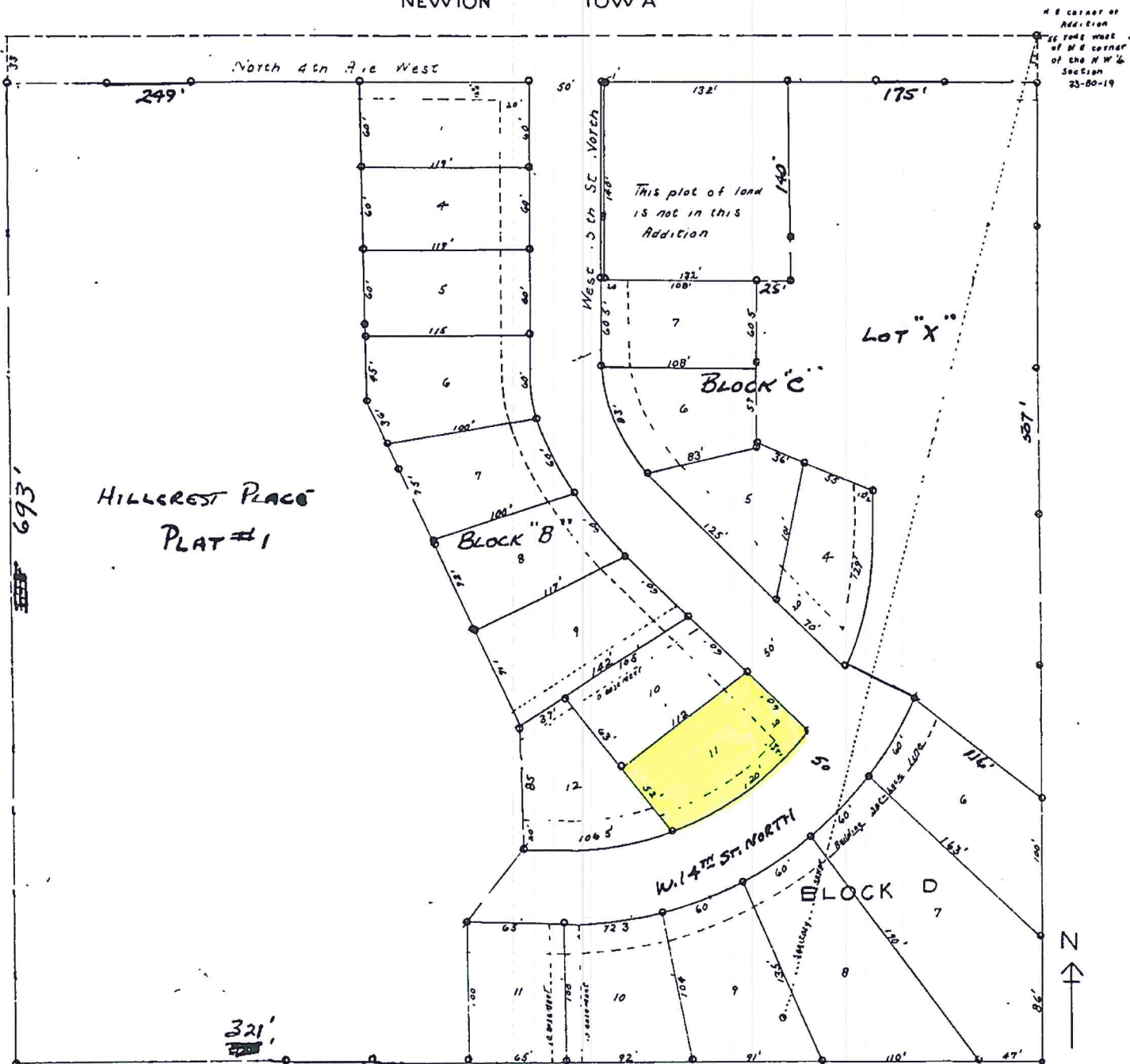
4.2

1500 N 3rd Ave W

$\frac{1}{4} = 24''$

N 3rd Ave W

HILLCREST PLACE
NEWTON IOWA



I hereby certify that the above plat correctly represents a survey of an addition known as Hillcrest Place Plat No. 2, Newton, Iowa. The measurements of each lot are shown in feet; the addition is laid out in two blocks showing the lots in each block and also showing the streets as marked. There is a strip of land, one foot wide and one hundred and forty feet in depth on the east side of the north and on West 15th Street North to be known as Lot B, Block C. The description of the addition is as follows:

Lot A of Block C of Hillcrest Place, Newton, Iowa, an addition to the City of Newton, Jasper County, Iowa, as shown by Plat Book B page 185 in the office of the Recorder of said county.

Gas pipes were placed at all lot corners.

Dated this 7th day of June, 1961.

Ray McMurray
Registered Engineer

BOOK E PAGE 272

STATE OF IOWA, JASPER COUNTY, ss:

Auditor of Jasper County, Iowa, do hereby certify that in pursuance of the provisions of Chapter 321 of the 1924 Code of Iowa, I caused the foregoing plat to be executed for the reason that the owners of the said platted premises failed and neglected to execute the same after being notified as provided by law.

Auditor of Jasper County, Iowa.

STATE OF IOWA, JASPER COUNTY, ss:

On this _____ day of _____, 19____, before the undersigned _____, within _____ and for said county, personally came _____ to me personally known to be the Auditor of Jasper County, Iowa, and the identical person whose name is affixed to the foregoing as Auditor of Jasper County, Iowa, and as such County Auditor personally acknowledged the execution of the same to be his voluntary act and deed.

Witness my hand and _____ seal this _____ day of _____, 19____, at Newton, Iowa.