



CITY OF COLUMBIA TENNESSEE  
 BOARD OF ZONING APPEALS  
 STAFF REPORT

CONTACT INFORMATION

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DOCKET/CASE/APPLICATION NUMBER

22-0248

APPLICANT/ PROPERTY OWNER

Randal Shaw/ Shaw Enterprises LLC

PUBLIC HEARING DATE

N/A

PROPERTY ADDRESS/LOCATION

1137 Pretender Way/ Elan Phase II  
 Subdivision Lot 57

**REQUEST: Variance from Minimum Setback  
 (Driveway Setback)**

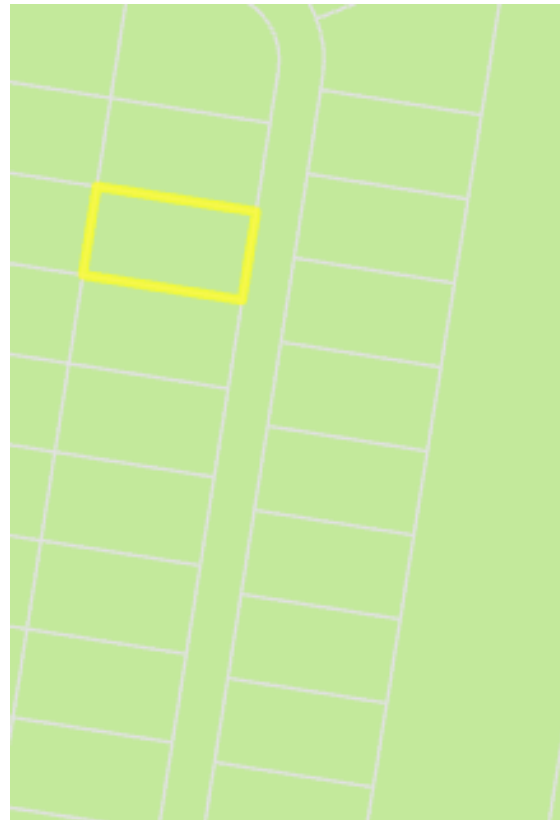
The applicant requests a variance from the strict application of the City of Columbia Zoning Ordinance. Specifically, the applicant requests a reduced driveway separation.

On July 14, 2022 City Council adopted a new zoning Ordinance (4400). The subject property is part of platted subdivision that was created under the previous zoning Ordinance (3638), creating a vested right to develop under the bulk standards in effect at the time. The applicant is requesting relief from the *standards* of the previous Ordinance; however, the *process* and criteria for review of a variance request is subject to the new Ordinance. The criteria are established by state law and remain the language governing variance requests is very similar between the old and new ordinances.

The previous Zoning Ordinance (3638) mandated that residential driveways shall not be located within five feet of a side or rear lot line (Section 10.2.12). This standard is also included in the new zoning code recently adopted by the City Council (Section 4.3.12.E)

The applicant asks that the Board of Zoning Appeals determine from the evidence presented in the application that a hardship exists due to unusual lot conditions. The applicant further asks the Board to find that the requested variance is the minimum relief from the hardship and that all other criteria for granting a variance under Section 8.5.16.L of the Ordinance (4400) have been met.

It is physically possible to utilize the subject property either without a variance, or with a lesser variance. The physical limitations which do exist result from the applicant’s design choices. Staff recommends that the Board deny the applicant’s request.



EXISTING ZONING	EXISTING LAND USE	SURROUNDING ZONING & LAND USE	SITE IMPROVEMENTS	Historic District
CD-3	Single Family Residence (In Development)	CD-3	Single Family Home	N/A

### **DEVELOPMENT STATUS & HISTORY:**

- On January 13, 2021 the Planning Commission approved a Final Plat for Phase 2 of the Elan Subdivision. The Final Plat depicts lots which conform to Ordinance 3638 (Section 6.3.8).<sup>1</sup>
- Throughout 2021 and 2022 the applicant applied for building permits. The plot plans provided with the permit applications depicted homes and driveways which conform to the standards of the Ordinance.
- More than 30 homes across the two phases of Elan have been completed without variance. Many of the them feature side-loaded garages. Many of them have nearly identical lot dimensions.

### **REVIEW & ASSESSMENT:**

Ordinance 3638 (Old Code) – Applicable Standards

#### 10.2.12 PARKING FACILITY DESIGN STANDARDS

##### 1. Minimum Driveway Separation

- b. For residential uses (excluding multifamily), driveways for residential uses shall not be located within five feet of a side or rear lot line unless a shared driveway is used.

Ordinance 4400 (new Code) - Process

#### 8.5.16.L VARIANCE REQUIREMENTS

##### 1. Standards:

The Board shall not grant a variance unless it makes findings based upon evidence presented to it as follows:

- a. That by reason of exceptional narrowness, shallowness, or shape of a particular piece of property at the time of enactment of this Ordinance, or by reason of exceptional topographic conditions or other exceptional and extraordinary situation or condition of such piece of property, the strict application of any regulation contained within this Ordinance would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property.
- b. That the Variance is the minimum Variance necessary so as to relieve such difficulties or hardship and thereby make possible the reasonable use of the land, Building, or Structure.
- c. That the Variance will not authorize uses or activities in the applicable District other than those permitted by this Ordinance.
- d. That financial returns alone shall not be considered as a basis for granting a Variance.

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<sup>1</sup> On July 14, 2022 the City Council adopted a new Zoning Code (Ordinance 4400). The previously approved plat, and the applicant's timely progress developing the site, creates a vested right to develop under the standards of the previous ordinance.



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- e. That the granting of the Variance will not be substantially detrimental to the public good or substantially injurious to other property or improvements in the area in which the subject property is located, and will not substantially impair the intent and purpose of the general provisions of the City's zone plan and this Ordinance.
  - f. That the proposed Variance will not impair an adequate supply of light and air to the adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety.
  - g. That the alleged difficulty or hardship has not been caused or created by the act or omission of the applicant or any person having an interest in the property
2. Notwithstanding anything to the contrary contained or implied in Section 8.5.16.L.1, **none of the following shall be deemed or considered to be, or be considered in making a determination whether strict compliance with this Ordinance presents, a peculiar and exceptional practical difficulty** to or exceptional or undue hardship upon the owner of property:
  - a. Pecuniary considerations
  - b. Aesthetic considerations
  - c. Historic Preservation
  - d. Public good
  - e. Over-compliance with other provisions of this Ordinance
  - f. Personal Situations
  - g. Proximity to inconsistent or incompatible Uses or Development
  - h. Other Variances that have been granted
  - i. Nonconformities
  - j. District boundaries
  - k. Conditional Uses or Uses Permitted Subject to Limited Use Standards; or
  - l. Deterioration of surrounding area
3. Neither any Nonconforming Use of neighboring lands, Structures, or Buildings in the same District, nor any non-permitted or Nonconforming Use of lands, Structures, or Building in other Districts shall be considered grounds for the issuance of a Variance.
4. Under no circumstances shall the Board of Zoning Appeals grant a Variance to allow a Use that is not permissible under this Ordinance in the applicable District, or any Use which is expressly or by implication prohibited by the terms of this Ordinance in said District.
5. The Board of Zoning Appeals may impose such conditions and restrictions upon the premises benefited by a Variance as may be necessary to comply with the provisions set out in Sections 8.5.16.L.1 above to reduce or minimize the injurious effect to such Variance upon surrounding property and better carry out the general intent of this Ordinance. The Board of Zoning Appeals may establish expiration dates as a condition or as a part of any Variances.

STAFF ANALYSIS

Staff has reviewed this variance request in relation to Section 8.5.16.L and finds the following:

The hardship was created by act or omission of the applicant or a predecessor in interest.

- The lot is newly created and conforms to the dimensional standards of the applicable Ordinance (3638). The applicant has not identified any feature of the site that is unique and not self-created.
- The massing and orientation of a home is a design choice, not a feature of the lot. The subject lot could have accommodated a design that left a more generous turnaround, thereby providing more comfortable maneuvering in and out of a side-loaded garage.

The requested variance – an 80% reduction of the standard – is not the minimum variance that will relieve the hardship and make possible the reasonable use of the land.

- No deviation from the standard would be necessary if the applicant had designed the home with sufficient space to maneuver out of the garage.
- The applicant requests an 80% reduction in the required spacing, from 5 feet to 1 foot. The applicant has not explained how that number was calculated or shown that 80% is the minimum deviation necessary to relieve the claimed hardship.
- Even if the Board determines that this is an extraordinary situation that prevents strict application of the standard, a lesser variance may alleviate the claimed hardship. For example, if an administrative adjustment of 20% (1 foot) could provide sufficient room to maneuver, a variance of 4 feet would be inappropriate.

Granting the requested variance will be substantially detrimental to the public good and will impair the intent and purpose of the general provisions of the Zoning Ordinance.

- The BZA is a quasi-judicial body empowered to grant relief to hardships which deprive property owners of their use of land in conformity with the Zoning Ordinance.
- The City Council is the City's legislative body and – with advice of the Planning Commission – has sole authority to establish bulk standards applicable to all similarly situated properties in Columbia. If the applicant disagrees with the wisdom of the 5' driveway setback, he may bring that concern to the City's legislative body and request a change to the standard.
- Variances granted by the BZA must be based on a site-specific finding of hardship.
- The BZA may not use the variance process to exempt a single homebuilder or property owner from the bulk standards. The quality of the homes constructed by the applicant, the inconvenience to a contracted homebuyer, and the false representations of the applicant are all irrelevant. The BZA may only grant a variance based on a site-specific finding of hardship.
- The bulk standards must apply to all owners of similarly zoned property in the same way. Ignoring the bulk standards of the applicable Ordinance undermines public confidence in the City's non-arbitrary application of the zoning code.

**RECOMMENDATION:**

**Deny**

**Recommended Motion:**

Move to deny the requested variance having found that the variance criteria listed in the City of Columbia Zoning Ordinance have not been sufficiently and fully satisfied.

**Alternative Motions:**

**Alternative Motion [Approve]:**

Move to find that all seven variance criteria listed in the City of Columbia Zoning Ordinance have been sufficiently and fully satisfied and grant the requested variance.

**Alternative Motion [Approve Subject to Conditions]:**

Move to find that all seven variance criteria listed in the City of Columbia Zoning Ordinance have been sufficiently and fully satisfied and grant the requested variance subject to the following conditions: *[list conditions of approval]*.

**Alternative Motion [Defer]:**

Move to find that there is insufficient information to make a decision, continue the hearing, and request that the [applicant/staff] provide: [list additional information] for review at a future meeting.