




TECHNICAL MEMORANDUM

TO: Laura Oliver, Deputy Recorder
FROM: Shay Stark, Planner
DATE: May 5, 2022 
SUBJECT: Barton Subdivision – Front Setback Exception – Planning Commission

PROJECT NO.:

In recognition that there are two separate Agenda items for the Barton Subdivision this memo is being provided specifically to address the front setback exception. As depicted on the Sensitive Area Map the Applicant is requesting an exception to the front setback on Lot #4 in the HR-1 Zone to allow for a 20-foot front setback based upon the following section of code:

10-9A-12-7: FRONT SETBACK EXCEPTION:

The planning commission can approve an adjustment to the front setback of not less than twenty feet (20') from the front lot line abutting a street if it is demonstrated that by doing so sensitive areas such as steep slopes, ridgelines, drainage areas, or wildlife corridors would be preserved. A forty-five foot (45') clear zone at the corner of a road intersection is still required. (Ord. 08-4, 2-26-2008)

The key for Planning Commission is that this front setback exception may be granted: *if it is demonstrated that by doing so sensitive areas such as steep slopes, ridgelines, drainage areas, or wildlife corridors would be preserved.*

A landowner has the right to utilize their property for the purposes that are allowed in the underlying zone as long as the property and proposed use meets the general requirements of the underlying zone, and that conformance has been demonstrated through the appropriate approval process and recording of the appropriate instrument as defined in the approval process ex. Plat, Certification or Agreement. In some cases, a piece of property that is located in a specific zone is configured in such a way that the property owner cannot utilize the property at all with in the zoning requirements. City's write into the code the ability to grant exceptions that recognize that there are situations where the restrictions or purposes of the code may cause a hardship not allowing the property owner to utilize their land as allowed in the underlying zoning. In the case of the exception noted in 10-9A-12-7 the purpose of the code requirements is to preserve steep slopes, ridgelines, drainage areas or wildlife corridors. The exception recognizes that the 50-foot minimum front setback requirement may restrict someone from being able to utilize their property as allowed in the underlying zone due to the natural features of the lot.

In determining the need for exceptions that are written into the code it is important that the exception be applied consistently. Some considerations that may be helpful are: Does the current code cause a hardship that does not allow the property owner to enjoy the same rights of use as other properties in the same zone generally enjoy? Please note that typically in the state code the use of the term hardship does not include something that is self-imposed or of an economic nature. As an example, a person may have a specific floor plan they would like to

build on a lot, but it won't fit within the setbacks. If the setbacks and overall buildable area are reasonable and have not hindered the construction of homes on other similar lots in the zone then the fact that a particular floor plan does not fit on the lot is not considered a hardship, the property can still be utilized for its intended purpose. Are there other circumstances attached to the property that don't generally apply to other properties in the same zone? And will the granting of the exception allow the property owner a property right possessed by other property owners in the same zone that in the current circumstances the property does not possess?

RECOMMENDATION

If Planning Commission finds that the applicant has adequately demonstrated through the Sensitive Areas Plan and Revegetation/Retention Plan or other information provided by the Applicant, that it is essential to grant an exception for a 20-foot setback in order to preserve the specific environmental considerations mentioned in 10-9A-12-7 and thus allow the Applicant the same rights afforded to other properties in the same zone that would not currently be available under the 50 foot setback, then it is recommended that the frontage exception be granted across the full frontage of Lot #4. Please state or refer to a statement of how the preservation of these areas have been addressed by allowing the exception as part of the motion.

END

