

# Agenda



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**Hugo Board of Zoning Adjustments and Appeals**  
**Thursday, October 12, 2023**  
**Hugo City Hall**  
**6:30 PM**

**A. ROLL CALL:** Arcand, Petty, Weidt

**B. APPROVAL OF MINUTES**

1. August 24, 2023

**C. PUBLIC HEARING**

1. **Hunter and Brayanna Smith, 12033 Everton Avenue North** – Variance request to allow for an accessory building within the rear yard setback.

**D. NEW BUSINESS**

**E. OLD BUSINESS**

**F. ADJOURNMENT**

## **Minutes for the Board of Zoning Meeting of Thursday, August 24, 2023**

Chair Weidt called the meeting to order at 6:30 pm.

PRESENT: Arcand, Weidt.

ABSENT: Petty.

STAFF: Rachel Juba, Community Development Director  
Max Gort, Associate Planner

## **Approval of Minutes for the BOZA Meeting of October 27, 2022**

Board Member Arcand made a motion, seconded by Chair Weidt to approve minutes for the meeting of October 27, 2022.

Ayes: All.

Nay: None.

Motion carried.

## **Public Hearing: Nick Heinle, Prairie Homes, LLC. – Variance request for 14320 Grantaire Lane North**

Staff provided a background on the request submitted by Nick Heinle, owner of Prairie Homes, LLC. The request is for a window well at 14320 Grantaire Lane to encroach on the required side yard setback by a distance of 3 feet, 8 inches, where an encroachment of 2 feet is allowed by ordinance. A building permit was issued on June 28, 2023 approving new construction of a single-family home with a window well located in the side yard setback a distance of 3 feet, 8 inches. Staff was in error in issuing the permit. The house and window well are under construction. The applicant is requesting the variance to allow for the window well's encroachment. Window wells must be at least three feet deep to allow for safe egress in the event of an emergency, making the request a reasonable use. There are unique circumstances in that the Victor Gardens development contains homes with a 5-foot side yard setback on the side of the home with the garage. The character of the area will not be noticeably altered due to the window well being at-grade. Staff is of the opinion that there are practical difficulties in meeting the ordinance standard. The spirit and intent of the ordinance is to maintain space between adjacent buildings. Since the window well is not a building and is constructed at grade, the requested variance meets the spirit and intent of the ordinance. Staff is recommending approval of the variance subject to the conditions in the approving resolution.

Board Member Arcand asked if the plan should have been approved. Juba stated that the window well's placement would not ordinarily be approved and that had the error been caught during permitting, staff would have required the applicant redesign the home such that it meets the ordinance standard.

**CITY OF HUGO COMMUNITY  
DEVELOPMENT DEPARTMENT**

**PLANNING AND ZONING  
APPLICATION STAFF REPORT**

**TO:** Hugo Board of Zoning Adjustments

**FROM:** Max Gort, Associate Planner

**SUBJECT:** **Hunter and Brayanna Smith, 12033 Everton Avenue North.** Variance request from the rear yard setback requirement for an existing shed and proposed accessory building.

**DATE:** October 10, 2023 for the Board Meeting of October 12, 2023

**ZONING:** Large Lot Single-Family Residential. (R-1)

**REVIEW DEADLINE:** November 7, 2023

**1. DESCRIPTION OF REQUEST:**

The applicants, Hunter and Brayanna Smith, are requesting to construct a 1,200 square foot accessory building. There is an existing 197.64 square foot shed on the property. The requested variance is to allow for the proposed accessory building and existing shed on the 0.86 acre property to have a rear yard setback of 10 feet, where 30 feet is required by ordinance.

**2. LEVEL OF CITY DISCRETION IN DECISION-MAKING:**

The City's discretion in approving or denying a variance is limited to whether or not the proposed project meets the standards in the Zoning Ordinance for a variance. The City has a higher level of discretion with a variance because the burden of proof is on the applicant to show that they meet the standards in the ordinance.

**3. ANALYSIS:**

**A. Surrounding Land Use and Zoning**

The surrounding properties are zoned Large Lot Single Family Residential (R-1) and are classified as Very Low Density (VLD) in the 2040 Land Use Plan. The surrounding properties range from 0.25 to 1.36 acres in size and are occupied by single family homes.

**4. VARIANCE STANDARDS:**

The Board must review the requested variances with the standards outlined in Section 90-38 of the land use regulations. Staff used these standards to review the variance request and finds the following:

**(1) Law. *The variance as requested is permissible by law.***

The proposed variance is permissible by law.

**(2) Practical Difficulties. *The applicant for a variance shall establish that there are practical difficulties in complying with the provisions of the zoning regulations. The term “Practical Difficulties” as used in the granting of a variance means:***

***a. Reasonable Use. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance and;***

Accessory buildings are allowed in the R-1 zoning district. Lots in the R-1 zoning district that are less than three acres in size are allowed two accessory buildings with a maximum combined size of 1,500 square feet. The applicant is requesting to construct a 1,200 square foot accessory building. There is an existing 197.64 square foot accessory building on site. The square footage of the proposed accessory building along with the existing accessory building will be below the maximum of 1,500 square feet. There are existing trees in the front yard of the property that would provide screening from Everton Avenue North. The request is a reasonable use.

***b. Unique Circumstances. The plight of property owner is due to circumstances unique to the property not created by the landowner and;***

The property is unique in that it is a 0.86-acre parcel in a zoning district that has a minimum lot size of 1 acre. The property is bordered to the east and west by 60-foot wide City rights-of-way that were created with the Shadyside No. 4 plat. The house is located roughly 32 feet from the rear property line at its closest point. To the southwest of the house, the property is split by the right-of-way of Everton Avenue North. There is steep sloping terrain from the location of the house toward the street.

The applicant has stated that the proposed location is the best for an accessory building due the area being relatively flat, located behind the house, and reduces the amount of necessary tree removal for construction. The accessory building ordinance prohibits the placement of accessory buildings in front of the house. If the applicant constructed the building in a location further from the rear property line, they would need to perform substantial grading and additional tree removal due to the steep slope in other areas of the property.

It is the staff opinion that the need for a variance is due to the topographical characteristics of the site and not due to circumstances created by the landowner.

***c. Character of Neighborhood. The variance, if granted, will not alter the essential character of the neighborhood.***

Accessory buildings up to 1,500 square feet are common in the R-1 zoning district. The zoning district's building setbacks are designed for lots with a minimum size of 1 acre. The accessory building ordinance discourages the construction of accessory buildings in front of the principal building on site. The City-owned parcels adjacent to the location of the proposed accessory building are currently vacant. Staff is of the opinion that the proposed accessory building will not disrupt the essential character of the neighborhood.

It is in staff's opinion that there are practical difficulties in meeting the setback requirements for the R-1 zoning district due to the geographic constraints of the site.

***(3) Spirit and Intent. The granting of the variance would be in keeping with the spirit and intent of this chapter and with the policies of the City's Comprehensive Plan.***

The spirit and intent of the ordinance for a rear yard setback is to require a minimum amount of space between buildings and the property line. It is the staff's opinion that there would be a reasonable amount of space between the proposed accessory building, existing shed, and the property line, although the building would encroach into the rear yard setback. The variance as requested meets the spirit and intent of the ordinance.

***(4) Prohibited Use. The variance, if granted, shall not have the effect of allowing any use prohibited in the district.***

Accessory buildings are a permitted use in the R-1 zoning district.

***(5) Hazard Consideration. The variance, if granted, shall not permit a lower degree of flood protection than required by this chapter. The variance shall be determined the minimum necessary, considering the flood hazard, to afford relief, and the variance shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.***

The property is not located within a FEMA designated floodplain.

***(6) Septic and Well Compliance. The sewage treatment system and water system of the subject property is in compliance with city and state codes.***

The property is served by municipal water and sanitary sewer services.

**5. CONCLUSION:**

It is in staff's opinion that the applicant meets all the criteria necessary to approve the variance request.

**6. RECOMMENDATION:**

Staff recommends approval of the variance requests subject to the conditions in the resolution.

**ATTACHMENTS:**

1. Location Map
2. Resolution
3. Site Plan

The applicant, Nick Heinle of Prairie Homes, LLC, approached the Board and stated that mitigating factors are being added to address the concerns from neighbors about the request. These mitigating factors include lids covering the window wells and a fence enclosing the home from all sides to address safety concerns.

Board Member Arcand asked what the safety concern Heinle heard from neighbors was. Heinle stated that neighbors stated they were concerned with children being able to fall into the window well, which would be mitigated by the covers on the window wells, the fence that Heinle is installing, and the existing fence that the neighboring property owners have on their property line. Arcand asked what the City's requirements for safety measures would be. Juba responded that the cover on the window well is not required, and that the Senior Engineering Technician determined that drainage will not be impeded. Arcand asked if the City would be liable for permitting the home construction in error. Juba stated that the variance request abates that liability.

Chair Weidt opened the public hearing at 6:43pm.

No one spoke.

Chair Weidt closed public hearing at 6:43pm.

Board member Arcand made a motion, seconded by Chair Weidt, to approve the variance request for Nick Heinle, Prairie Homes, LLC for property located at 14320 Grantaire Lane North.

Ayes: All.

Nay: None.

Motion carried.

The request will be considered at the City Council meeting of September 5<sup>th</sup>, 2023.

### **Adjournment**

Board member Petty made a motion, Arcand seconded, to adjourn at 6:44pm.

Ayes: All.

Nay: None.

Motion Carried.

Respectfully Submitted,  
Max Gort, Associate Planner