



## Oakley City Planning Commission

### STAFF REPORT – Rose Variance Application

**To:** Oakley City Planning Commission  
**From:** Stephanie Woolstenhulme, City Planner  
**Date of Meeting:** November 2, 2022, 7:00 p.m.  
**Type of Item:** Setback Variance Application – Possible Action  
**Process:** Administrative Review

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**RECOMMENDATION:** Staff recommends that the Planning Commission review and approve or deny Rose Setback Variance Application.

### PROJECT DESCRIPTION

**Project Name:** Rose Setback Variance Application  
**Applicant(s):** Eric and Jeanina Rose  
**Property Owner(s):** Eric and Jeanina Rose  
**Location:** 4328 N. Millrace Road  
**Parcel Number(s):** KKWP-1  
**Size:** .42 acres  
**Zone District:** RR-1 (1 unit of density per 1 Acre)  
**Adjacent Land Uses:** Residential/Agricultural  
**Existing Uses:** Residential/Pasture  
**Public Hearing:** November 2, 2022

### PROPOSAL:

The applicant desires a variance to setback for an accessory building to rear lot line. Applicant comments: “This is a request to decrease the rear setback from 12’ to between 10’ and 8’ in order to increase the distance between the proposed garage and existing shed, garden, and tree. And better use of the property.”

## FINDINGS OF FACT

1. The proposed project is located at approximately 4328 N. Millrace Road
2. Property is located in the Rural Residential (RR-1) zone.
3. Lot is .42 acres.
4. 3/23/2022 City Council designated Planning Commission as interim acting authority for variance applications.

## ZONING ORDINANCE REFERENCE

Current Code:13-4-5 designates rear setback as 12 feet from property line.

## VARIANCE FINDINGS

### Utah State Code 10-9a-702. Variances.

- (1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.*
- (2) (a) The appeal authority may grant a variance only if:*
- (i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;*
  - (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;*
  - (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;*
  - (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and*
  - (v) the spirit of the land use ordinance is observed and substantial justice done.*
- (b) (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:*
- (A) is located on or associated with the property for which the variance is sought; and*
  - (B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.*
- (ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*

*(c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:*

*(i) relate to the hardship complained of; and*

*(ii) deprive the property of privileges granted to other properties in the same zone.*

*(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.*

*(4) Variances run with the land.*

### **Applicant submitted the following responses to Variance Requirements:**

2(a)(i) With the setback at 12', it only allows for 4' of clearance between the existing shed/garden and the new garage. By allowing this variance, it would allow for more clearance between buildings.

2(a)(ii) The property around our lot is all in green belt, so there would be no buildable lots behind our property. There would be not reason for a setback of 12'.

2(a)(iii) There would be no affect either negative or positive in this area.

2(a)(iv) Granting this variance will not affect any neighboring property in this area.

2(a)(v) By granting this variance the spirit of provision is not affected and will allow for better use of the property in respect to clearances between and around the existing and new builds.

### **CITY ATTORNEY COMMENT**

*On the variance, I don't think it qualifies. Variances can't be granted if the hardship being relieved is self-imposed or economic. Since this is entirely about wanting a bit of extra room between existing buildings and a proposed new building, all of which are under the property owner's control, and there looks to be additional room to shift the garage up a bit, I don't see how this is a hardship. Looks more like a variance for convenience, which the code doesn't allow.*

### **CITY PLANNER NOTES**

KKWP-2 is the parcel to the rear and south of applicant parcel. It is 5.08 acres and is in RR-1 zoning. It is currently in greenbelt status but still has 5 development rights associated with it.

# COMMUNITY COMMENT

None received.

The Planning Commission is empowered to approve or deny variance application.

Variance Site Plan – taken from larger plat:

