

Pre-application No: 9935892
File number: CPC UV 21--00149

Project Description

Name: Legalization of the existing duplex and accessory dwelling unit known as 739/741 E High St

This submittal is for approval of use and non-use variances at 739/741 East High Street, TSN 64172-15-003: request to legalize an existing duplex and accessory dwelling unit (ADU).

There is a continued and growing need for residential housing in Colorado Springs and in the Mid-Shooks Run Neighborhood. This submittal is for approval to recognize and preserve the existing configuration of the 3,047 square foot duplex plus ADU known as 739/741 East High Street. The existing property includes a duplex in the existing 2,186 square foot main house, with an existing independent basement unit, plus an existing single-family 861 square foot cottage single-family home ADU in the back. The property is zoned for two families (R2). The property is on a 5,092.51 square foot lot and city rules require a 7,000 square foot lot to build an accessory dwelling unit (non-use variance), while only allowing a total of two families on a property with an accessory dwelling unit (use variance). This proposal is for a non-use variance because of the size and a use variance because the number of families would not allow for the current three-family use of the property. The rear property set back does not meet the 10' requirement (non-use variance). The front setback does not meet the 25' requirement (non-use variance). The side set back of the back building does not meet the 5' requirement (non-use variance). The 1 off-site parking space on the driveway does not meet the 1 space per unit requirement (non-use variance). This proposal for non-use variance would also allow for these current conditions.

The current three-family, duplex plus ADU, configuration of the property has long been harmonious with the neighborhood and contributes to meeting the needs for good housing. This property's structures are legally recognized by El Paso County. Similarly, the Pikes Peak Regional Building Department (RBD) has authorized permitting of the structures in their present configuration. No new construction or renovation is proposed, as these three units already exist in good livable condition. The property was built in 1910, including the back cottage and the basement unit of the main house. The basement unit was remodeled at least as far back as 1988 and has had independent electrical service since at least 1979, if not further back in time. There is no encroachment on public or neighboring property lines. There are no proposed increases in property heights.

In accordance with RBD guidelines, the unit enumerations for 739 E High Street will be changed to unit 101 on the main floor and unit 10 in the basement, previously units A and B, respectively.

The current owner purchased the property in December of 2020 and therefore does not have personal records or plans of the original building or remodeling of the property and the individual units.

THE PROPERTY IS LOCATED WITHIN ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN). OBTAINED FROM THE FLOOD INSURANCE RATE MAP (FIRM), MAP NUMBER 08041C0733 G, EFFECTIVE DECEMBER 7, 2018.

Haynes Addition to Colorado Springs is recorded in Plat Book A at Page 49 of the records of El Paso County, Colorado.

Justification (non-use variance)

1. Extraordinary or Exceptional Conditions:

- a. There are no physical conditions exceptional to the neighborhood.
- b. There are no unique property conditions.
- c. The lack of property setback of the accessory dwelling unit from the property line does not meet city standards (non-use variance). The three-family configuration on a 5,092.51 sqft. lot (non-use variance) and a duplex plus an accessory dwelling unit (use variance) do not meet city standards. The presence of 1 off-street parking space for 3 dwellings does not meet city standards (non-use variance).
- d. There are no unique environmental conditions.

2. No Reasonable Use

b. Granting of the variance would be necessary to enjoyment of the current condition of the property and denial would result in significant loss of existing physical portions of the property and financial use of the property, which would represent less reasonable use compared to proximate and similar properties throughout the city. There are many neighborhood and citywide houses with multi-unit rental use sometimes exceeding their zoning limits and off-street parking requirements. There is also a neighborhood standard of building up to the property line, with for instance four of the neighboring properties having structures abutting their property lines. Denying the current and historical use of this property as a three-family residence, in its current condition, would represent less reasonable use compared to proximate and similar properties.

3. No Adverse Impact

a. The granting of variances shall not be detrimental to public health, safety and welfare or injurious to surrounding properties.

The non-use variance for a duplex on a 5092.51 sqft. lot (7000 sqft. required), the use variance for three families living on a property with an accessory dwelling unit (two families allowed by ADU rules), the non-use variance for a 2' setback of the rear structure from the property line (10' required), and the non-use variance for 1 off-street parking space (3 required) will pose no detriment to the public. Most notably, these structures have existed in their current configuration and use for decades. Moreover, they do not encroach on neighboring private or public space nor pose any nuisance. This will represent no increase in parking needs in the community compared with the preceding decades of three-family use.

In fact, the denial of these variances would result in detriment to the public with loss of existing good residential apartments, of which the city and neighborhood are in great need.

b. The granting of variances shall not be inconsistent with any plans adopted by the city

No conflict.

c. The granting of variances shall not weaken the general purpose of the Zoning Ordinances or its regulations.

No conflict as this is not a new construction.

d. The variances, if granted, shall only be to the extent necessary to afford a reasonable use of the property.

These would afford the owner the continued ability to provide three units for rental in the community and would not involve any changes to longstanding harmonious property use.

Use Variance review criteria

The following criteria must be met in order for a Use Variance to be granted:

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same zone so that a denial of the petition would result in undue property loss; and

The city rules allow for two-families with an ADU in this zone. The current and historical configuration of the property is as a three-family property. Denial of the use variance, legalizing this as a duplex plus an ADU, would result in substantial property loss in converting this three-family property to a two-family property by removing the ADU. Similarly, a denial would result in loss of income from the property in its current configuration and loss of a rental unit in the neighborhood and the city, which both have a need for residential dwellings.

2. That such variance is necessary for the preservation and enjoyment of a property right of the petitioner; and also,

The granting of the use variance is necessary to preserve the current enjoyment of the property by this petitioner. If the use variance were denied I would need to spend time, energy and money converting this to a two-family property from the current three-family use it has had for decades.

3. That such variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners of property.

The granting of the use variance, legalizing the current and historical three-family use, including an ADU, would not be injurious as this property has been harmonious with the neighborhood for decades. No changes are being proposed, rather this petition is to legalize the way this property has been for decades. There is no encroachment on neighboring private or public space by the property. Proximity to the rear property line is very similar to at least 4 immediately adjacent properties and multi-unit use is very much in keeping with similar neighborhood and city properties.