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**DATE:** May 4, 2022  
**TO:** Planning Commission Chair and Commissioners  
**FROM:** Jessica Jagoe, City Planner  
**SUBJECT: Planning Case #22-004 – No Public Hearing Required**  
**Applicant:** William and Adrienne Guelker  
**Property Location:** 1152 Benton Way  
**Request:** Variance

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**Requested Action**

William and Adrienne Guelker (“Applicants”) have requested a variance to remove an existing 20’ by 12’ deck on the rear side of the single-family dwelling located at 1152 Benton Way (“Subject Property”) and replace it with a 14’ by 14’ addition and 14’ by 12’ deck. To construct the proposed addition and deck, the applicants are requesting four variances:

- 1) Side Yard Setback: The minimum combined side yard setbacks shall be 15 feet. The applicant is requesting a variance with the home addition to maintain the existing combined side yard setbacks of 11.6 feet.
- 2) Minimum Landscape Area: The minimum required landscaped area is 65%. The applicant is requesting a variance to decrease the minimum to 62% of the property.
- 3) Maximum Structure Coverage: The maximum allowed structure coverage is 25%. The applicant is requesting a variance to allow 30% structure coverage.
- 4) Floor Area Ratio: The maximum allowed floor area ratio is 0.3 or 1,800 square feet of floor area on this property. The applicant is requesting a variance to construct an addition that would result in a total of 2,188 square feet of floor area, equaling a floor area ratio of 0.36.

**Background**

**1. Existing Site Conditions:**

1152 Benton Way, the Subject Property, is zoned R-3, Townhouse and Low Density Multiple Dwelling District. It is designated for Low Density Residential Uses in the 2040 Comprehensive Land Use Plan. The subject property is the site of a single-family dwelling owned by the Applicants. Surrounding parcels to the North, East, and South are also zoned R-3, Townhouse and Low Density Multiple Dwelling District and designated for Low Density Residential Uses in the

2040 Comprehensive Land Use Plan. The parcel to the West is zoned B-2, General Business District and designated for Community Mixed Use in the 2040 Comprehensive Land Use Plan.

## 2. Site Data

<b>2040 Future Land Use Plan:</b>	LDR – Low Density Residential
<b>Existing Land Use:</b>	Single Family Dwelling
<b>Zoning:</b>	R-3 Townhouse and Low Density Multiple Dwelling District
<b>Lot Size:</b>	0.14 acres

## 3. Proposed Use

The Applicants are requesting a variance to decrease the required side yard setback and landscaped area and increase the allowed structure coverage and floor area ratio for a proposed building addition and deck replacement. The table below details the variance requests.

	<i>Required</i>	<i>Existing</i>	<i>Proposed</i>
<i>Side Yard Setback</i>	5' minimum/ 15' combined	5.8' minimum/ 11.6' combined	5.8' minimum/ 11.6' combined
<i>Landscaped Area</i>	Greater than 65%	65%	62%
<i>Structure Coverage</i>	Less than 25%	27%	30%
<i>Floor Area Ratio</i>	Less than 0.3	0.31	0.36

The Applicants are proposing to use the second floor of the addition as a dining room and the first floor as a small work shop and storage area. The proposed deck will replace the existing deck. Due to the size of the Subject Property, the Applicants would not be able to construct the proposed deck or addition without a variance.

## 4. Hunters Park Planned Unit Development

The Subject Property is located within the Hunter's Park Planned Unit Development which was approved in 1973. The single family portion of Hunters Park is built on approximately 29 acres of which seven acres are shared green space, almost three acres are used for shared driveways, and the remaining 19 acres are divided into 84 single-family residential homes.

The PUD process can permit a great amount of flexibility for developments from the underlying zoning regulations. This development used the flexibility permitted in the PUD process, and the neighborhood was designed with varying lot sizes, structure setbacks, and lot coverages. Lots in the neighborhood range in size from 4,356 square feet to 32,670 square feet with a median lot size of 7,187 square feet. A number of the lots were permitted to have structures that did not meet the underlying zoning requirements, which is allowed under the PUD process. Because the lot sizes and building locations were approved as part of the PUD process, they are not considered nonconforming even if they do not meet the underlying R-3 zoning requirements.

Therefore in developments like the Hunters Park neighborhood, it is not uncommon for the PUD to include an alternative set of regulations that supersede the underlying zoning regulations. In the case of the Hunters Park, alternative lot layout standards were not created, which means that the

underling R-3 regulations were left in place. Since most of the structures and lots do not meet the R-3 Zoning regulations, virtually any change to the structures in Hunters Park required a variance. Furthermore, it can be difficult to apply the R-3 regulations to lot sizes that do not meet the minimum R-3 lot size.

The City Council considered approving an alternative set of regulations for the Hunters Park neighborhood in 1985 (Planning Case 85-010). As part of this planning review, the City compiled a summary of the existing development patterns within the Hunters Park Development which were as follows:

- Front Yard Setback from Public Street – Vary from 8 feet to 60 feet. Most units determined to be in a range of 20 feet to 25 feet.
- Front Yard Setback from Private Street – Range of 18 feet to 20 feet.
- Side Yard Setback – Several as low as 2 feet and some as high as 30 feet. Common range determined to be 4 feet to 15 feet, with a combined setback of 15 feet.
- Rear Yard Setback – Range from 8 feet to 45 feet. Most units determined to be 14 feet to 24 feet.
- Lot Structure Coverage – Range from 17% to 38%. Most lots determined to have 25% to 30% structure coverage.

From this analysis it was determined that an alternative set of regulations for Hunters Park should not be created because the lots and structure layouts were so varied in the original PUD that it would be very difficult to create a standard that is less complicated than the existing process. The City Council did, however, approve a process for evaluating future changes to structures in Hunters Park:

1. If additions or alterations to the homes do not require setback or coverage variances from the R-3 Zone, only a building permit issued administratively by the City shall be required. This removed the need for a PUD amendment with every change.
2. If additions or alterations to cluster homes do require additional variances of any kind from the R-3 Zone, the standard variance procedure set by the City shall apply.
3. In both cases, the Architectural and Environmental Committee of the Hunter's Park Homeowners Association shall review and approve the proposed addition or alteration before submitting the same to the City. It shall assist individual homeowners in determining if a variance is required for proposed alterations.

According to the planning case files, the Hunters Park homeowner association approved this process along with the City. Since many of the lots and structures do not meet current requirements under the R-3 regulations, a variance is still almost always required. A number of other properties in the Hunter's Park neighborhood have received variances to construct similar additions; however past variance approvals are not a basis for current variance reviews.

1. Planning Case #86-35: Side yard setback, rear yard setback, and lot coverage variance approved at 1153 Benton Way
2. Planning Case #97-21: Side yard setback, rear yard setback, and lot coverage variance approved at 1124 Benton Way
3. Planning Case #09-012: Side yard setback, rear yard setback, and lot coverage variance approved at 1126 Benton Way
4. Planning Case #12-013: Side yard setback, lot coverage, and landscaped area variance approved at 1185 Benton Way

There may be other properties that have improvements/additions from the original PUD approval and/or subsequent amendment in 1985 that did not trigger the requirement to apply for a variance.

## 5. Approvals

The Planning Commission is being asked to determine whether a variance request for flexibility on side yard setbacks, landscaped area, structure coverage, and floor area ratio should be approved. The sketches that have been submitted show the location of the proposed building addition and deck replacement. The evaluation of the proposal should be based on the District Provisions in Section 1320 and the Requirements for a Variance in Section 1355.04, Subd. 4.

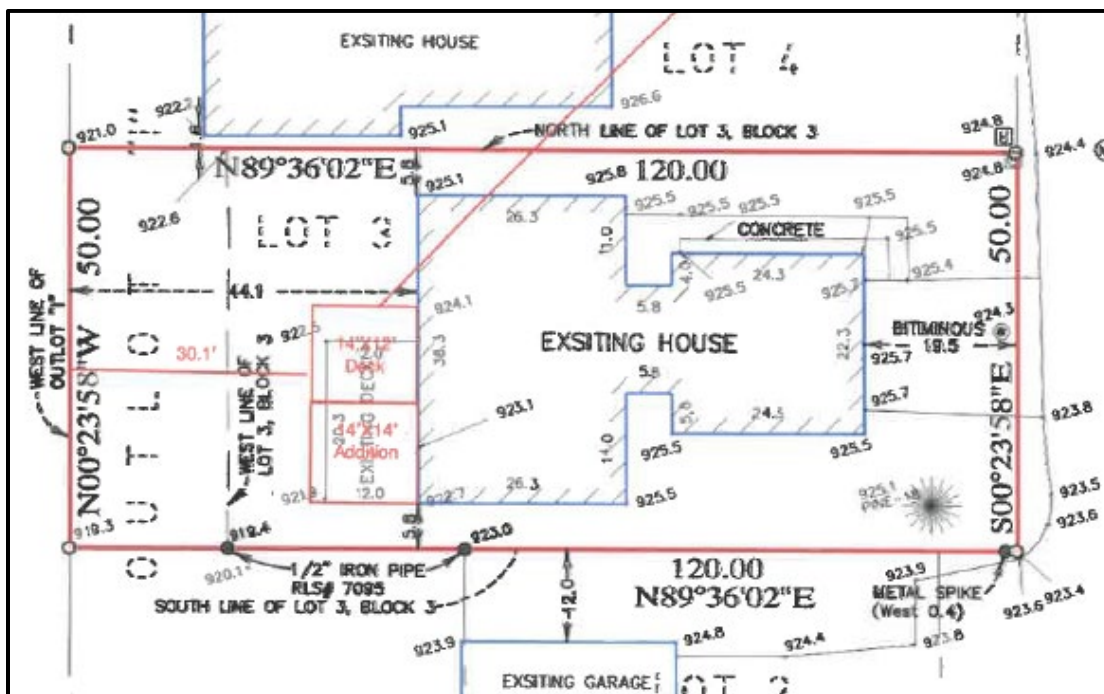
### Plan Evaluation

#### Chapter 13, Zoning Regulations Review

##### 1. District Provisions (R-3, Townhouse and Low Density Multiple Dwelling District) – Section 1320.06

###### *Lot Size and Dimensions*

The Subject Property was constructed as part of the Hunter's Park Planned Unit Development, approved in 1973. The Subject Property has a lot area of 6,000 square feet. Section 1320 – District Provisions of the Zoning Code requires a minimum lot size of 11,000 square feet per single family dwelling unit.



###### *Structure Setbacks*

In the R-3 District, the minimum side yard setback requirement is five 5 on each side and 15 feet combined. The current structure is located approximately 5.8 feet from each side yard property line, making the combined side yard less than the minimum required. The proposed building

addition would maintain the existing building line of the structure at a setback of 5.8 feet from the south side yard property line. The proposed addition would conform to rear setback requirements. The structure located on the parcel south of the Subject Property is approximately 18 feet from the existing structure.

#### *Landscaped Area*

In the R-3 District, the minimum landscaped area required without a variance is 65% of the property or 3,900 square feet. The Subject Property has an existing landscaped area of 3,906 square feet or 65%. The proposed addition would decrease the total landscaped area to 3,710 square feet, or 62% percent of the property.

#### *Structure Coverage*

The R-3 District allows for a maximum structure coverage of 25% or 1,500 square feet on the Subject Parcel. The existing structure coverage is 1,626 square feet or 27%. This does not conform to the requirements of Section 1320.06 of the Arden Hills City Code. The proposed addition would increase the total structure coverage by 196 square feet for a total of 1,822 square feet, or 30% of the Subject Property.

#### *Floor Area Ratio*

In the R-3 District, the maximum allowed Floor Area Ratio (FAR) is 0.3, or 1,800 square feet on the Subject Property. The existing floor area is 1,837 square feet, equally a FAR of .31. The proposed addition will increase the FAR to 0.36, or 2,188 square feet.

## **2. *Variance Review***

The role of the Planning Commission is to determine and consider how the facts presented to them compare with the city's articulated standards. The Commission should base their decision on the facts presented and then apply those facts to the legal standards contained in city ordinances and relevant state law. Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While the Planning Commission may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the statutory practical difficulties factors. Residents can often provide important facts that may help in addressing these factors, however, unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision.

The Planning Commission may impose conditions when granting variances as long as the conditions are directly related and bear a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed the front setback limit, any conditions attached should presumably relate to mitigating the effect of the encroachment.

## **3. *Variance Requirements – Section 1355.04, Subd. 4***

The Applicants request a variance to construct a 14' by 12' deck and a 14' by 14' home addition. The Planning Commission will need to make a determination utilizing the following variance findings and criteria on whether there are practical difficulties with complying with the zoning regulations. If the applicants do not meet all the factors of the statutory test, then a variance should not be granted. Variances are only permitted when they are in harmony with the general purposes and intent of the ordinance.

1. Purpose and Intent. The variance request shall comply with the purpose and intent of the provisions of the City's Zoning Regulations and with the policies of the City's Comprehensive Plan.

*The variance request for 1152 Benton Way is consistent with the purpose and intent of the R-3 Zoning District and with the policies within the City's Comprehensive Plan. A single-family detached dwelling with an addition is a reasonable use within the Low Density Residential land use designation and the R-3 Zoning District.*

2. Practical Difficulties. The Applicant for a variance shall establish that there are practical difficulties in complying with the provisions of the Arden Hills 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.

*The existing parcel on the Subject Property is currently "non-conforming" with the R-3 district's standards for lot size, combined side yard setbacks, structure coverage, and floor area ratio due to the small lot sized approved at part of the Hunter's Park Planned Unit Development. The proposed building addition would maintain the current side yard setbacks and be located 5.8 feet from the south side yard property line. The combined side yard setbacks would remain 11.6 feet. The proposed addition would decrease the Subject Property's landscaped area and increase the structure coverage. The increase in lot coverage and the decrease in landscaped area are reasonable in the Hunter's Park Development, due to the abundance of shared greenspace throughout the development. There is a total of seven acres of Homeowners Association common greenspace throughout the neighborhood.*

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

*The Hunter's Park Planned Unit Development was approved with small lot size and density in mind. At the time of development, many of the dwellings in the neighborhood were built closer to property lines than would otherwise be allowed by the Arden Hills Zoning Code. Due to the small lot sizes in the Hunter's Park neighborhood, the requirements of the R-3 District are an impediment to home improvements for the Subject Property as well as the surrounding parcels. A variance would be needed for most scenarios involving a substantial home improvement project within the neighborhood.*

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

*The proposed building addition would maintain the current side yard setbacks and would not require a rear yard setback variance. The proposed addition will match the exterior materials of the existing structure. By doing so, the Applicants have stated this will maintain the character of the area. Also according to the application, the proposed addition would not create over building and crowding within the neighborhood.*

3. Economic Consideration. Economic consideration alone does not constitute a practical difficulty.

*The proposed variance is not based on economic consideration.*

4. Access to Sunlight. Inadequate access to direct sunlight for solar energy systems shall be considered a practical difficulty.

*A solar energy system is not proposed.*

### **Findings of Fact**

The Planning Commission must make a finding as to whether or not the proposed application would adversely affect the surrounding neighborhood or the community as a whole based on the aforementioned factors. Staff offers the following findings for consideration:

#### *General Findings:*

1. City Staff received a land use application for a variance request to the required combined side yard setback and landscaped area and increase the allowed structure coverage and floor area ratio at the Subject Property, 1152 Benton Way.
2. The Subject Property is located within the Hunters Park Planned Unit Development which was approved with flexibility in the development standards.
3. The Subject Property does not comply with the underlying R-3 district standards for lot size, combined side yard setbacks, structure coverage, and floor area ratio.
4. The proposed building addition would maintain the current side yard setbacks and be located 5.8 feet from the south side yard property line. The combined side yard setbacks would remain 11.6 feet.
5. The proposed addition would not require a rear yard setback variance.
6. The structure coverage is proposed to increase from 27% to 30% of the Subject Property. A variance is required to exceed 25% structure coverage of a parcel.
7. The landscaped area is proposed to decrease from 65% to 62% of the Subject Property. A variance is required to reduce landscaped area below 65% of the parcel.
8. The Floor Area Ratio (FAR) is proposed to increase from 0.31 to 0.36. A variance is required to increase FAR above 0.3.
9. The proposed addition of the subject parcel would conform to all other requirements and standards of the R-3 district.
10. The City Council has approved similar variance requests for other properties in the Hunter's Park Planned Unit Development.

#### *Variance Findings:*

11. Variances are only permitted when they are in harmony with the general purposes and intent of the ordinance.
12. A single-family detached dwelling with an addition is a reasonable use within the R-3 District.
13. The nonconforming lot size for the R-3 District, which was approved as part of the Hunter's Park Planned Unit Development, and the substantial amount of shared open space that is part of the development, presents a unique situation for the property owner.

14. The proposed addition will not reduce the existing side yard setbacks. The addition will not require a rear yard setback variance. The nearest dwelling unit to the south of the Subject Property is approximately 18 feet away.
15. The increase in lot coverage and the decrease in landscaped area are unlikely to have a negative impact on the Hunter's Park Development, due to the abundance of shared greenspace throughout the development. There is a total of seven acres of Homeowners Association common greenspace throughout the neighborhood.
16. The variance request is not based on economic considerations alone.
17. The Applicants have received approval from the Hunter's Park Architectural and Environmental Committee for the proposed addition.

### **Options and Motion Language**

Staff has provided the following options and motion language for this case. The Planning Commission should consider providing additional findings of fact as part of the motion to support their recommendation for approval or denial.

- **Recommend Approval with Conditions:** Motion to recommend *approval* of Planning Case 22-004 for a Variance at 1152 Benton Way, based on the findings of fact and the submitted plans, as amended by the conditions in the May 4, 2022, Report to the Planning Commission:
  1. A Building Permit shall be issued prior to commencement of construction.
  2. The proposed building shall conform to all other standards and regulations in the City Code.
- **Recommend Approval as Submitted:** Motion to recommend *approval* of Planning Case 22-004 for a Variance at 1152 Benton Way, based on the findings of fact and the submitted materials in the May 4, 2022 Report to the Planning Commission.
- **Recommend Denial:** Motion to recommend *denial* Planning Case 22-004 for a Variance at 1152 Benton Way, based on the following findings: *findings to deny should specifically reference the reasons for denial and why those reasons cannot be mitigated.*
- **Table:** Motion to *table* Planning Case 22-004 for a Variance at 1152 Benton Way: *a specific reason and information request should be included with a motion to table.*

### **Notice**

Although a variance does not require a public hearing, a public meeting notice was prepared by the City and mailed to properties within 500 feet of the Subject Property on April 22, 2022. A public hearing notice for this planning case was published in the Pioneer Press on April 22, 2022. Minnesota statute does not clearly require a public hearing before a variance is granted or denied, however, after consulting with the City Attorney, staff agree that the best practice is to allow public forum on all variance requests. A public forum allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

### **Public Comments**



Staff have not received written or verbal comments in regard to this proposal as of April 28, 2022.

### **Deadline for Agency Actions**

The City of Arden Hills received the completed application for this request on February 24, 2022. Pursuant to Minnesota State Statute, the City must act on this request by May 24, 2021 (60 days), unless the City provides the petitioner with written reasons for an additional 60-day review period. With consent of the Applicant, the City may extend the review period beyond the initial 120 days. The applicant submitted a written request to waive the 60-day review period on March 10, 2022. The City must act on the variance application at 1152 Benton Way by May 31, 2022.

### **Attachments**

- A. Land Use Application
- B. Location Map
- C. Planning Commission Letter
- D. Site Survey
- E. Building Plans
- F. Homeowner's Association Approval
- G. Applicant Request to Waive 60-day Review