

ITEM 1 Thatcher Lamb requests Variances from Section 14.14A.050, Provo City Code (Yard Requirements) to reduce the required distance between buildings from fifteen feet (15') to four feet (4') and to reduce the rear setback for an accessory building from three feet (3') to one foot (1'), located at 515 South 700 East. Maeser Neighborhood. Mary Barnes (801) 852-6408 mabarnes@provo.org PLVAR20240137

<p>Applicant: Thatcher Lamb</p> <p>Staff Coordinator: Mary Barnes</p> <p>Property Owner: James Thatcher Lamb (Et Al)</p> <p>Parcel ID#: 65:708:0001</p> <p>Address: 515 S 700 E, Provo, UT</p> <p>Zone: Low Density Residential (LDR)</p> <p>Acreage: .10 acres</p> <p>Number of Lots: 1</p> <p><u>ALTERNATIVE ACTIONS</u></p> <ol style="list-style-type: none"> 1. Approve the requested Variance. This action <u>would not be consistent</u> with the recommendations of the Staff Report. <i>The Board of Adjustment should state new findings.</i> 2. Continue to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is July 15, 2024, 6:00 P.M.</i> 	<p>Current Legal Use: Single Family residential home in the LDR zone.</p> <p>Relevant History: After purchasing the lot in question, the applicant's neighbor produced a historical document that required the rear property line of the subject property to be moved. The property line was shifted, and the applicant subdivided the property into two 4,356 sq ft parcels, with single family homes on each. The subject property's home was finished in 2023. A 171 sq ft shed was built in the backyard in 2023. It is in violation of the setback requirements and distance from buildings requirements.</p> <p>Neighborhood Issues: Staff is not aware of any issues that have been raised.</p> <p>Summary of Key Issues: The applicant has applied for a variance for an existing shed in their backyard. Section 14.14A.050(9)(c) describes the minimum interior side and rear yard setback as three (3) feet. Section 14.14A.050(5) describes the distance between buildings requirements as fifteen (15) feet. The property owner would like the setback reduced to one (1) foot, and the distance between buildings requirement reduced to four (4) feet.</p> <p>Staff Recommendation: Staff recommends that the Board of Adjustment deny the requested variance with the finding contained in this staff report</p>
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OVERVIEW

Thatcher Lamb is requesting a variance to the interior side and rear yard setback area and the distance between buildings requirement at 515 S 700 E to keep a 171 sq ft shed. This shed was constructed in Summer 2023, about the same time the home was finished. Staff have identified this shed as being in violation of Provo City Code Title 14.14A.

- Section 14.14A.050(9)(c) describes the minimum interior side and rear yard setback for accessory buildings outside of the buildable area as three (3) feet. The shed in question currently has a 1 ft setback from both property lines.
- Section 14.14A.050(5) describes the distance between buildings requirements as fifteen (15) feet. The shed in question currently has a 4 ft setback from the single-family home.



The applicant is arguing that this variance is needed due to an unforeseen rear lot line shift early in the development process in 2022. Because of that rear lot line shift, the applicant had to choose a different zone that would allow for two smaller single-family lots. Therefore, the shed that the applicant had always planned to place in the backyard is not possible without violating setback codes. The applicant also experienced theft during construction and installed the shed to safely store tools and other materials.

RELEVANT HISTORY

The Lamb's bought a .29-acre property (including the property to the south, 535 S 700 E) in 2020 with the intention to subdivide the property into two 6,000 sq ft lots. The zoning for the property at that time was Residential Conservation (RC), necessitating a re-zone to R1-6 for the

desired lots. It was subsequently revealed that the land purchase only included .21 acres, so R1.6 zoning or two 6,000 sq ft lots was no longer possible. The Lamb's decided to request an LDR rezone, which permits 4,000 sq ft single family lots, with the intention to build two small single-family homes. The rezone was approved in November 2022, and the subdivision plat for two .10 acre or about 4,380 sq ft lots was recorded in December 2022.

The rear yard setback requirement for the LDR zone is 20 ft. However, 14.14A.050(7) allows the Development Services Director to reduce the setbacks if it's visually compatible and it does not violate an easement or building and fire code. Therefore, the rear yard setback for the new home at 515 S 700 E was reduced to 15 ft during the construction process after the Director evaluated the site and requirements.

FINDINGS OF FACT

- The subject property is in the Low Density Residential (LDR) zone.
- The LDR zone has a 15 ft distance between buildings requirement.
- The LDR zone has a 3 ft interior side and rear yard setback for accessory buildings outside of the buildable area.

STAFF ANALYSIS

Compliance with 14.02.040

Section 14.05.030(9) describes the criteria for which a Variance may be granted. This ordinance, in part, is as follows **with staff responses in bold**:

- a. Any person or entity desiring a waiver or modification of the requirements of this Title as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the Board of Adjustment for a variance from the terms of this Title.
- b. The Board of Adjustment may grant a variance only if:
 - i. Literal enforcement of this Title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Title;

Literal enforcement of this Title would not cause unreasonable hardship for the applicant because not being able to have a shed is self-imposed. The applicant decided to rezone to LDR, which has a stricter distance between buildings requirement, to get 2 small single-family lots. The 15' distance requirement means that even with a 20' rear yard, fitting a 171 sq ft shed in the back yard would still be almost impossible.

The applicant can store tools behind the existing fence to keep theft at a minimum.

- ii. There are special circumstances attached to the property that do not generally apply to other properties in the same district;

This property is zoned LDR, which is the zone that was chosen by the applicant. The surrounding zones include General Commercial (CG), Residential Conservation (RC), Low Density Residential (LDR), Moderate Density Residential (MDR), and High Density Residential (HDR). The CG zone requires accessory building next to a property line must have a 4-hour fire-resistant wall. The RC zone requires 6 ft between accessory and main buildings, and a 3' setback from any property line. MDR and HDR require 15 ft between

buildings and 5 ft setback from a property line. The applicant consciously rezoned the property to LDR, which carries similar requirements to other zones in the area.

- iii. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

The property to the south is in the same zone as the subject property. This property does not have the same issues with an accessory building, because a shed is not essential to the enjoyment of a substantial property right. The RC zoned properties to the east can have accessory buildings in their backyards because they have different setbacks requirements. The applicant chose to rezone this property LDR, which carries stricter requirements.

- iv. The variance will not substantially affect the general plan and will not be contrary to the public interest; and

If the variance were given it would not substantially affect the General Plan. However, building sheds to the property line is contrary to the public interest. There is an 8' Public Utility Easement along the perimeter of this property that did not get a release when this shed was constructed. Also, setbacks are meant to maintain minimum landscaping between buildings and property lines, as well as adequate separation to reduce the chance for fire to spread from one building to another. Allowing a property owner to put a shed next to the property line could have an aesthetic and physical impact on the adjacent property.

- v. The spirit of this Title is observed and substantial justice done.\

Staff feels that without the variance, the property owner can still use the property, therefore, no substantial property right is being denied.

CONCLUSIONS

Staff believes there are options available to the applicant to ensure that tools or materials are not stolen. In the staff analysis, each of these criteria were evaluated, and staff finds that the variance request should be denied. For the Board to grant this variance, all five criteria must be met.

JUDICIAL APPEAL OF BOARD OF ADJUSTMENT ACTION

Chapter 14.05 provides a process for appeal of a determination by the Board of Adjustment (quoted in part):

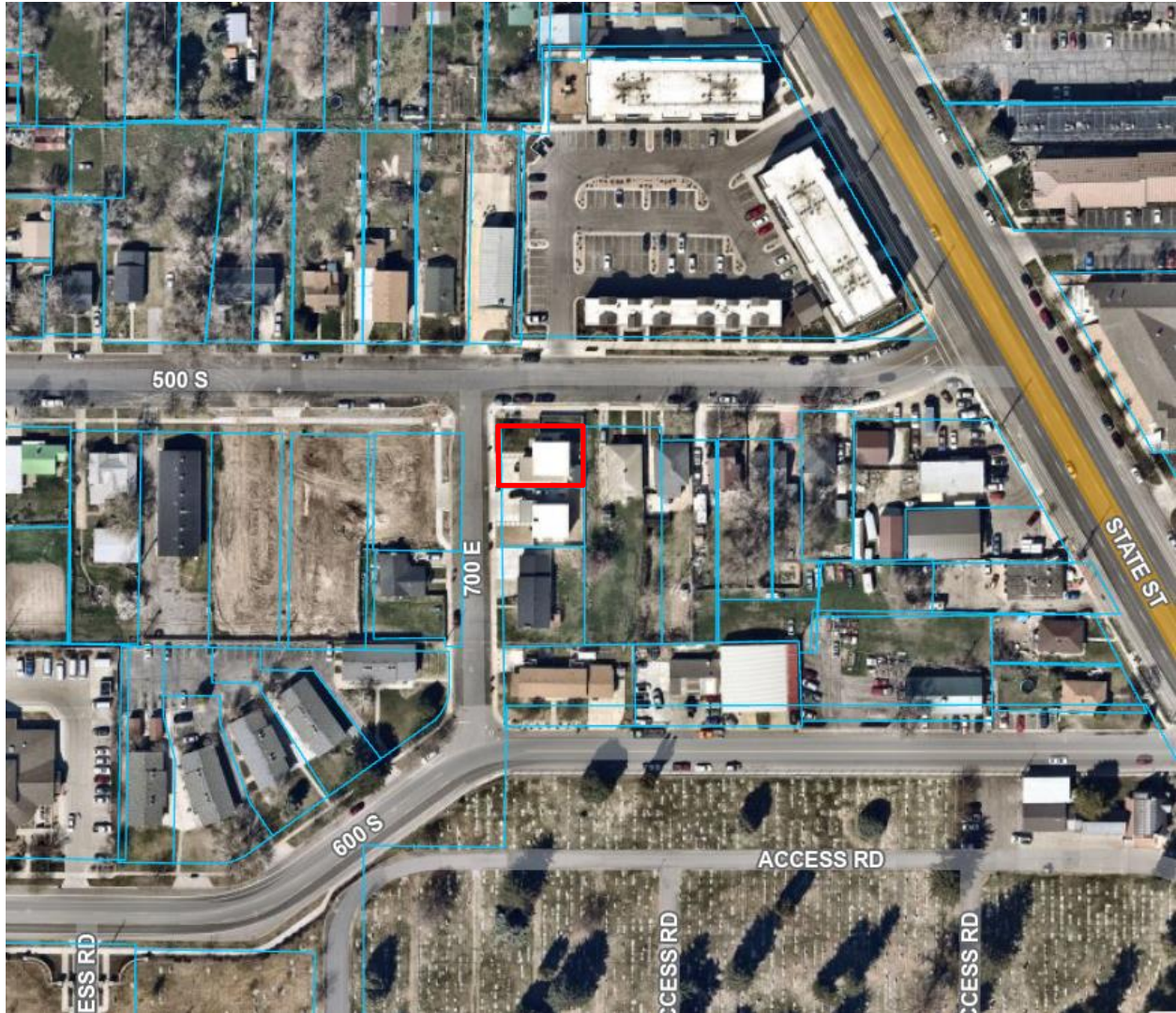
04.05.050. Judicial Appeal.

- i. Any person aggrieved by or affected by any decision of the Board of Adjustment may have and maintain a plenary action for relief from the District Court of competent jurisdiction, provided petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the Board of Adjustment or with the City Recorder.

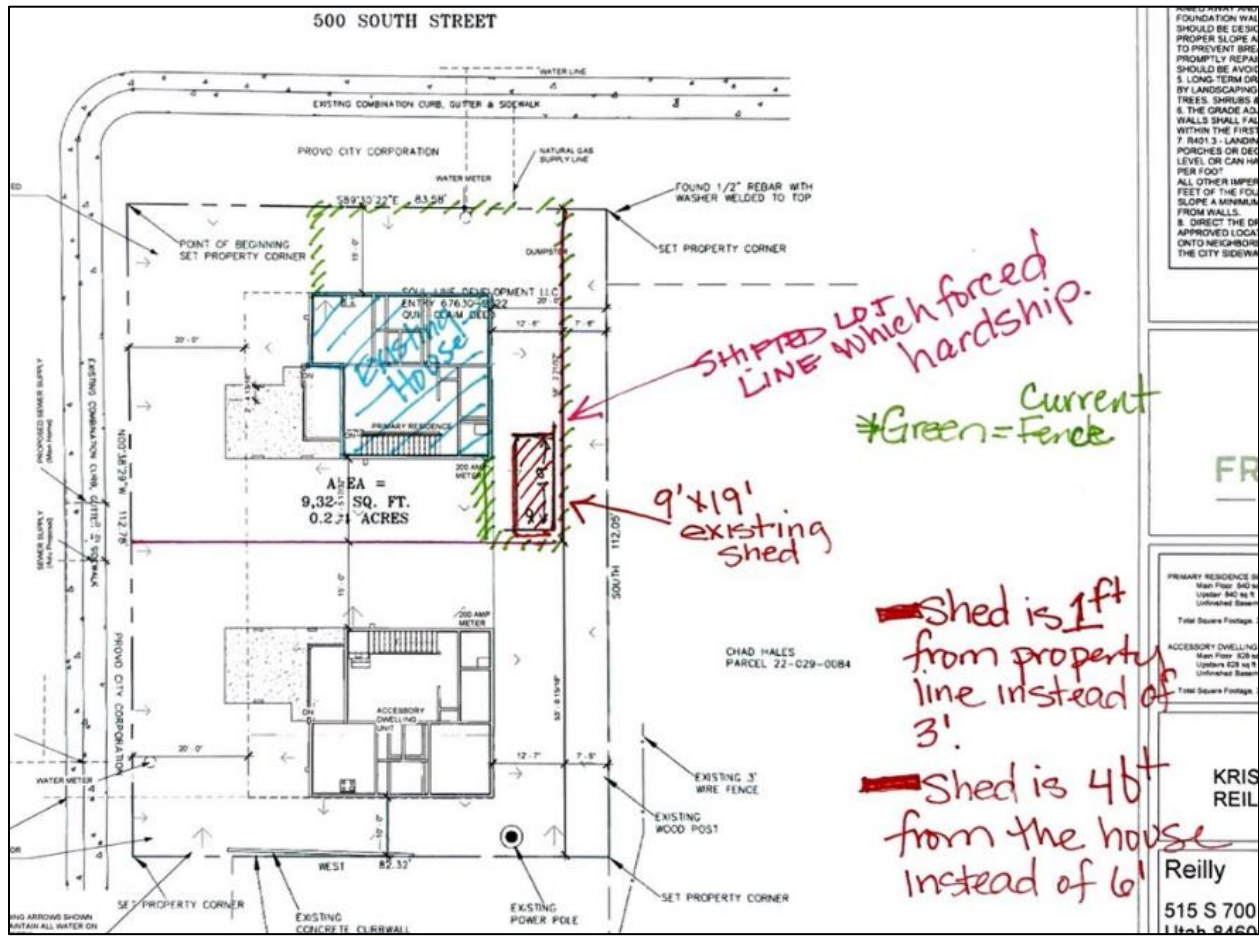
ATTACHMENTS

1. Area map
2. Site plan
3. Shed Photo
4. Applicant Justification

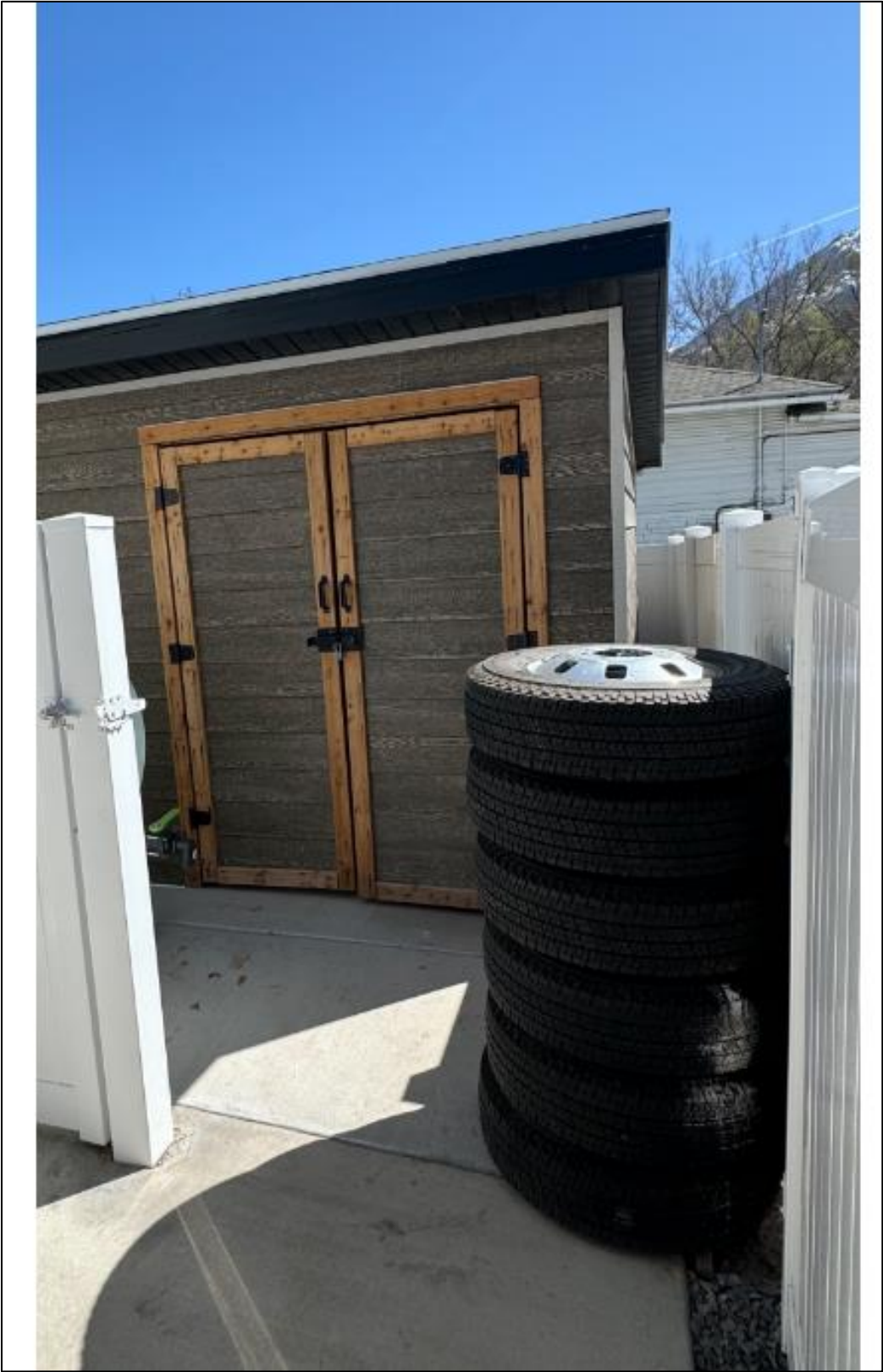
ATTACHMENT 1 – AREA MAP



ATTACHMENT 2 – SITE PLAN



ATTACHMENT 3 – SHED PHOTO



ATTACHMENT 4 – APPLICANT JUSTIFICATION

“The Board of Adjustment shall hear and decide appeals from zoning decisions applying the zoning ordinance; and variances from the terms of the zoning ordinance . . .

(9) Variances.

(a) Any person or entity desiring a waiver or modification of the requirements of the zoning 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 Board of Adjustment for a variance from the terms of the zoning ordinance. (b) The Board of Adjustment may grant a variance only if:

(i) Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;

(ii) There are special circumstances attached to the property that do not generally apply to other properties in the same district;

Several months after the property was purchased we found ourselves spiraled into an undisclosed historical mess. We purchased .29 acres which turned out to only be half of that. Then during the construction process the neighbor sited a document from 21 years earlier where he claimed to own 15' of the 20' backyard. To resolve the land dispute we worked hand in hand with the city and the neighbor and collectively came to a solution the cost us an additional shift of property boundary which removed some the backyard. The need to resolve that for the city and the neighbor caused the pinch we feel now that affected the placement of the shed. Without a garage, and limited back yard setback, it forced an unusual placement of the shed needed to protect the property and assets there

(iii) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

(iv) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

The variance in no way negatively affect the neighbors or other adjacent landowners. The shed is contained within the property boundary including roof overhang. It simply sits a little closer to the property line than normal boundaries would require.

(v) The spirit of the zoning ordinance is observed and substantial justice done.

During the construction process we underwent several theft events of goods and materials. As we were preparing to move in we realized that all of our tools required to maintain employment were at risk of theft as well. We build the shed we had always planned but with the historical traumas tied to the lot it stole the extra space that would have allowed all normal setbacks to be met.

(c) (i) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection 8b, the Board of Adjustment 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.

This property is located near the railroad tracks and there are events that occur around the area that are safety hazards. Everything must be locked up and secured behind gates and in sheds. We have called the police to request added drive by protection on several occasions due to the appearance of drug deals out

front of our home as well as on the street across from us. We do not have the ability to build a garage. The shed again was/is our sole source of property protection.

(ii) In determining whether or not enforcement of the zoning ordinances would cause unreasonable hardship as outlined under Subsection 8b, the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

The hardship is not self-imposed. Sadly it is imposed by a document that was signed by the city and the land owners 21 years before us that emerged from the graves during the construction process that caused the setbacks to have to change mid build and left limited space to be able to secure belongings. The lack of safety we feel in the neighborhood compounded the need for the immediate shed. Again, had we not had to find a solution to a 21-year-old land issue that had nothing to do with us we would not have been left with the hardship we have now.

(d) In determining whether or not there are special circumstances attached to the property under Subsection (8) (b), the Board of Adjustment 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 district.

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

(f) Variances run with the land.

(g) The Board of Adjustment and any other body may not grant use variances.

(h) In granting a variance, the Board of Adjustment may impose additional requirements on the applicant that will:

(i) mitigate any harmful effects of the variance; or

(ii) serve the purpose of the standard or requirement that is waived or modified . . .”

Section 14.02.010(5)(a), Hearings — Notice and Procedures , states, “All written documents and evidence from the applicant shall be received by the Community Development Department at least fourteen (14) days in advance of the public hearing.”

Please submit any additional information you believe that the Board of Adjustment should consider.

Please be aware that, even if the Board grants your request(s), a building permit must still be obtained from the City prior to construction or remodeling of any structure. This is the property owner’s responsibility.

The shed is not of sufficient size to require a building permit.