

City of Melbourne



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AGENDA

ZONING BOARD OF ADJUSTMENT

City Hall Council Chamber
900 E. Strawbridge Avenue
Melbourne, FL 32901

March 30, 2026 • 6:30 PM

A. OPENING

1. Pledge of Allegiance to the Flag
2. Declaration of Conflict
3. Approval of Minutes: July 28, 2025
4. Public Comment
5. Requests for Dismissals, Postponements, or Withdrawals

B. UNFINISHED BUSINESS

C. NEW BUSINESS

6. **VAR2025-0004 - 424 S. Babcock Street**
In a C-1 zoning district, the following variance is requested:
Variance of 7.2 feet to allow a 12.8-foot side corner setback.
Part III, Appendix B, Article V, Section 2, Table 2B requires a 20-foot side corner setback in the C-1 (Neighborhood Commercial) Zoning District.
7. **VAR2025-0005 - 2307 Greenway Drive**
In a R-1AA zoning district, the following variance is requested:
Variance to allow a swimming pool in a side yard.
Part III, Appendix B, Article VII, Section 2(M)(1)(a) requires a swimming pool to be placed in the rear yard when a lot has frontage on one (1) street.

D. FUTURE/ADDITIONAL BUSINESS

8. Chairman and Vice-Chairman Discussion

E. ADJOURNMENT

Note: more than one member of the City Council may be in attendance at the meeting and may participate in discussions.

Pursuant to 286.0105, Florida Statutes, the City hereby advises the public that if a person decides to appeal any decision made



by this Board, agency or meeting or hearing, he will need a record of the proceedings, and that for such purpose, affected persons may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Community Development Department at (321/608-7500), no later than 5:00 p.m., at least 48 hours prior to the meeting.

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City Hall Council Chamber
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Melbourne, FL 32901

July 28, 2025, 6:30 p.m.

A. Opening

1. Pledge of Allegiance.
2. Roll Call.

Present: Peter Kostrzewa, Chairman
Jennifer Cope, Vice-Chairman
Charles Jackson, Member
Natalia Brauner, Member
Linda Cass, Member
Dave Bregard, Alternate Member
Diane Maynard, Alternate Member

Absent: Ravi Shah, Member
Thomas Herbert (Excused)

Also Present: Jeffrey Higgins, AICP, Planner
Adam Conley, City Attorney
Richard Broome, Deputy City Attorney
Samantha Buck, Recording Secretary

3. Approval of Minutes – June 30, 2025, Meeting

Moved Cope/Bregard to approve the minutes from the June 30, 2025 meeting, as presented.

Motion carried unanimously.

4. Declaration of Conflict.

There were no conflicts of interest declared for this item.

5. Requests for Dismissals, Postponements, or Withdrawals

Mr. Higgins confirmed that both applicants were present and there was a full complement of Board members present, so the Board would be able to review the two variance applications.

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B. New Business

6. **VAR2025-00001 – Alexander Wassuta, 792 Iroquois Ave.**

In a R-1A zoning district, the following appeal is requested:

A variance of 4 ft. 7 in. to allow a 2 ft. 11 in. side yard setback.

Part III, Appendix B, Article V, Section 2 (D), Table 2A requires a 7.5 ft. side setback.

This item was postponed until the July 28, 2025 meeting.

Mr. Higgins summarized the findings contained in the staff recommendation memo dated June 19, 2025, showing the Board the location of the property on an aerial photograph. He explained that a property's zoning dictates the building dimensions on a lot.

The applicant's property is zoned R1A and the side setbacks for this property is 7.5ft. A garage addition was constructed on the north side of the property which does not meet the required side setback.

Mr. Higgins provided the Board with a color-coded survey with areas that an addition could be added while meeting setbacks highlighted in yellow. He also referenced an old survey showing the original house footprint with a later addition to the rear that still complied with setback requirements.

There were no non-conformities prior to the addition to the north side of the garage Mr. Higgins commented that it is difficult to establish a hardship with so many options available where additional storage space could be added.

Mr. Higgins then moved on to summarize the six criteria that needed to be met in order for a variance to be granted. He noted that there is only one area that is angled within the lot and it is easy to measure setbacks on properties with straight lot lines. The addition was built without permits, and a variance is not necessary when building a code compliant addition. He reminded the Board that they are only here to discuss the side-setback on the property; not a dispute between neighbors.

In summing up, Mr. Higgins summarized why staff is recommending denial of this variance request, as presented, based on the application not meeting the six City Code factors for granting a variance.

The Chairman, Mr. Kostrzewa, asked if the Board had any questions or comments.

As there were no questions for Mr. Higgins, Mr. Kostrzewa invited the applicant to address the Board.

Alexander Wassuta, Melbourne, was sworn in by City Attorney Conley. Mr. Wassuta has owned the property for 39 years, but now resides in a nearby property on 2702 Hopi Drive. The original addition at the rear of the property constructed in 1980 was originally covered with an exterior siding (T-111) that was damaged in a series of five major storms. In 2005, the City issued a notice that they were behind in permitting due to the amount of damage

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caused during the storms. At that time, he had all the drawings for the roof, enclosed porch, garage, the bump-out storage, four replacement windows and four replacement doors stored on his company PC. All of these documents were submitted, along with the latest survey he had for the property. Unfortunately, access to all these documents was lost when the company closed three years after the work was completed. After submitting his application, he received three permits – a roof permit, a building permit and a trash permit. At that time, there was no other place in the yard where a structure could be placed due to vegetation and multiple palm trees. There was a 5ft. x 10ft. metal shed which had to be removed when the work was carried out on the property. Because of this, he incorporated the bump-out storage into his drawings. All of the work was subject to a complete inspection by a City Inspector. Code Enforcement routinely drove around the area looking for Code violations, but never stopped at his property. In 2020, Code Enforcement responded to a complaint about an odor coming from the bump-out storage area, stating that they believed there was a toilet there. The officer inspected the area and found no grounds to the complaint. Mr. Wassuta showed the Code Compliance officer copies of the permits and he went back to the office and was unable to find any of the paperwork submitted. The Code Enforcement later returned to advise him of his findings.

In November 2022, DC Roofing was issued a permit for a new metal roof, and once again, the survey submitted to the City showed the bump-out. All work was inspected, with no comment being made about the bump-out storage area and any violation of the setback.

In December 2022, Professional Grade Fence was issued a permit for the installation of a new fence. Once again, the same survey was submitted, with no comments being made about the storage bump-out at the time of the inspection.

Mr. Wassuta said that when purchasing another house across the street, he found paperwork referring to a shed on the property. The setbacks for the shed was 5ft. from the property line, and 10ft. from the rear property line. The survey for the shed was stamped with wording that the survey had been reviewed by Code Compliance. He asked why he is being penalized for something that happened 20 years ago.

Over the years, every improvement he made to the property was inspected and approved by the City. He is requesting this variance in order to keep this structure. The addition matches the structure of the house and is less than a 10ft. x 10ft. shed in area. It is only used to store Christmas items. The bump-out is narrow enough to be able to gain access to the side of the house to mow the lawn.

Mr. Kostrzewa gave Mr. Higgins the opportunity to respond to Mr. Wassuta's comments.

Mr. Higgins explained that the setbacks for the house were 7.5ft. when the property was built in the City of Eau Gallie, and they remained the same even when the property was annexed into the City of Melbourne; there have been no changes to the side setback. He believes that the 5ft. and 10ft. setbacks that Mr. Wassuta referenced were for an accessory structure. Over the years Code was changed as the City wanted to open up more areas for accessory structures, so the rear property line setback was reduced to 5ft. There are easements on the applicant's property which cannot be built on, and any accessory structure must be placed outside of that easement. He also said that he researched roof

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permits for anything that identified a building addition, and there were none. There is no record of a building addition on the permit for the new roof. The City would not issue a permit for something that does not meet setbacks. As a result of this, he still contends that there was no permit issued for the addition on the north side of the house.

A discussion ensued on City inspections and what the Inspectors refer to when carrying out an inspection. Mr. Higgins confirmed that the Inspector carry out their inspections based on architectural plans and a survey which would show how close the building is to the property line.

Mr. Wassuta stated that he submitted all the plans for the rear addition and the bump-out at the same time. The Inspector checked every step of work that was undertaken and all of the modifications to the home were submitted at the same time. Unfortunately, nobody has been able to locate copies of the permits and plans.

Mr. Higgins said that it was important to note that Mr. Wassuta was speaking about two separate additions, which he believed were not done at the same time; the addition at the rear of the property was constructed prior to 2005. He was unable to find any documentation that mentioned the side addition.

A brief discussion ensued on the replacement of the T-111 siding and during this discussion Mr. Wassuta assured the Board that this addition was included in the permit. The Inspector checked everything at that time and once it was passed, and the addition received approval it was covered with stucco to match the building.

There were no further questions for Mr. Wassuta, so Mr. Kostrzewa opened the floor for public comment.

Mark Woertendyke, Melbourne, was sworn in by Mr. Conley. He explained that he was a professional surveyor for 30 years, and owns the property adjacent to Mr. Wassuta. He said that he pleaded with Mr. Wassuta not to build this when he was working on the property. He referenced a piece of 2ft. x 4ft. that directs water away from the applicant's property. He has not been able to get a clear title on his property, and believes that Mr. Wassuta will be unable to get a clear title on his property as a result of this setback violation,

Jeffrey Woertendyke from Cocoa, (Mark Woertendyke's brother) was sworn in by Mr. Conley. He told the Board that Mr. Wassuta was aware that the building addition on the north side was not allowed when he was building it, and that is why he did not apply for a permit. He requested that the Board not approve this variance.

There was no other public comment, so Mr. Kostrzewa asked if there were any disclosures from the Board.

David Bregard disclosed that he had driven past the property two days prior to the last meeting (June 28th) in order to get a visual of what the variance request was about. He could not see any vent lines, and believes that the bump-out is only being used for storage. His only concern was that if the applicant's neighbor also encroached in the setback, this would result in a significantly reduced area. Apart from this, he did not feel that it was a

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large encroachment. He confirmed for the record that any decision he made at this meeting would be based on the evidence heard tonight, and not his site visit.

There were no other disclosures from the Board.

Mr. Higgins confirmed that no written correspondence had been received on this application other than the photographs that had been provided by Mr. Wassuta and Mr. Woertendyke. Although only one photograph had been shown for Mr. Woertendyke, more photographs had been provided and were available, if requested.

Mr. Conley confirmed that Ms. Maynard would be a voting member for this item in Mr. Shah's absence.

He also said that there had been some mention by Mr. Wassuta of an estoppel or vested rights by association with previous permit applications. He was unsure if this was relevant for the Board's consideration. Code contemplates the Board considering variance applications based on the six factors set out in Code. If Mr. Wassuta has additional documentation suggesting he has some permit-based entitlement for the structure, this maybe a separate matter from this Board's authority and duty.

Mr. Kostrzewa noted that the Board is looking at variance criteria based on Code. Anything else is beyond the Board's scope and would be a legal issue.

Mr. Bregard motioned to deny the variance, and Mr. Conley requested that he add standing as to why his decision was to deny the variance request.

Mr. Bregard amended his motion accordingly.

Moved Bregard/Maynard to deny application VAR2025-0001, based on the request not meeting the six City Code criteria factors for granting a variance.

Aye: Bregard, Maynard, Brauner, Cass, Jackson, Cope, Kostrzewa

Nay: None

Motion carried unanimously.

6. **VAR2025-0002 – Leonardo DRS, 100 N. Babcock St.**

In a C-2 zoning district, the following appeal is requested:

A variance of 10ft. to allow a 6ft. tall 50% Opaque fence setback 0ft. along the front property line.

Part III, Appendix D, Chapter 9, Article III, Section 9.44(b) requires a minimum 10ft. setback for fences greater than 4ft. tall.

Mr. Higgins summarized the findings contained in the staff recommendation memo dated July 17, 2025. He then provided the Board with an aerial photograph showing the north and south side of the parking lot which are located either side of the main entrance. The

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applicant is requesting a variance for a taller fence and a reduction in the fence setback. He confirmed that Code currently would allow the fence to be 4ft. high, and 50% opaque. He provided the Board with several photographs of a 4ft. opaque fence along this property line and explained that the fence height is limited so not to cause a visual obstruction for traffic leaving or entering the parking lot.

Mr. Higgins had prepared several slides showing the property line on the north parking lot highlighted in red. He then showed where the front property line encroached into the right of way. When these spaces were added, they were done so without a permit and in some areas, the property line traverses the parking space. These spaces must be removed in order to construct a fence on the property line. If the fence is installed 10ft. from the property line, it can be 6ft. in height. It is important to understand that a fence is not being denied to the applicant; however it can only be 4ft. in height in the north and south parking lots.

Mr. Higgins then referenced the parking lot that is located south of the main entrance.

He then looked at the south side of the parking lot. A 4 ft. fence would be allowed by Code without a variance and its installation would not affect any of the existing parking spaces. A 10ft. measurement to allow a 6 ft. fence would result in the fence being installed just outside the parallel parking spaces.

Mr. Higgins then addressed the six criteria that they would need to meet in order to meet City Code. Although the applicant is requesting a 6ft. fence to deter cut-through traffic, staff's evaluation is that this could be done with a 4ft. fence. Staff is not denying a 6ft. fence; it just needs to be moved to meet the required setback. There is no impediment to constructing a fence at a 4ft. height. Additionally, a 6ft. fence goes against the recommendation from the Engineering Department as this would cause a visual obstruction. It is important to remember that the City Engineer reviews sight-lines and can still deny this. Public safety is the forefront of Code.

In summing up, Mr. Higgins confirmed that staff is recommending denial of this variance request, as presented, based on the application not meeting the six City Code factors for granting a variance.

Mr. Kostrzewa asked if the Board had any questions or comments for Mr. Higgins. He noted that the variance granted in 2007 had a requirement for landscaping in the right of way. He asked if the parallel parking spaces occupy the area intended for the landscaping.

Mr. Higgins explained that the 2007 variance related to a building addition that was being constructed. At that time, the variance allowed them not to have to reconstruct the landscape buffer. The Babcock Street Streetscape Project was underway, and landscaping was being proposed for the right-of-way. If the landscape buffer had been created at that time, it would have been easier to place the fence there.

A brief discussion ensued on the parallel parking spaces, their legality, and how the parking lot was striped without a permit. Mr. Higgins explained that any part of a parking space cannot be in in the right-of-way. The fact that these spaces were not permitted also resulted in a narrowing of the drive aisle width to 17ft.

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Mr. Conley reminded the Board that they were only here to discuss the height of the fence and the setback.

As there were no further questions for Mr. Higgins, the applicant, Ronald Robledo, Melbourne Beach, was sworn in by Mr. Conley. Mr. Robledo provided the Board with an additional handout showing the style and dimensions of the proposed fence. He explained that he has been discussing this fence with his client for 5 years. His client's business is open 24-hours a day and there has been numerous vehicles broken into and staff have been accosted in the parking lot. The fence will be a deterrent for cut-through foot traffic and provide additional protection for their employees. There is a security guard on site who spends much of his day chasing people out of the parking lot. Liability is a concern for his client, so the proposed fence will be 16% opaque and the top rail of the fence will be above the line of sight on the 6ft. fence. Additionally, the property is so large that a 4ft. fence would look meager on the site.

Ms. Cope asked why the fence cannot be installed at the 10ft. setback and Mr. Robledo replied that it will remove much needed parking spaces for his client.

Mr. Higgins explained that if the fence was moved back 10ft., the spaces in the back-to-back parking would need to be angled to allow vehicles to navigate into a narrower drive aisle. Placing the fence at 10ft. would make the fence comply with Code but they would not be able to keep the 90-degree parking spaces.

As there were no further questions for Mr. Robledo, Mr. Kostrzewa opened the floor for public comment.

There was no public comment on this item.

Mr. Kostrzewa said that he would like to disclose that he was familiar with the site, and his prior knowledge would not prejudice his decision on this item. He also declared for the record that he had applied for a position with Leonardo DRS 20 years ago but had chosen not to accept the position. Later on, a company that he worked for was acquired by DRS and he received shares in the company at that time. He has also recently acquired stock in DRS; however, his shares do not rise to a level to preclude participation in this meeting.

Mr. Higgins confirmed that there had been no correspondence on this item.

Mr. Kostrzewa asked if there was a motion on this item.

Moved Cope/Bregard to deny this variance request based on the application not meeting the six City Code factors for granting a variance.

Aye: Cope, Kostrzewa & Jackson

Nay: Cass, Brauner, Bregard & Maynard

Motion failed.

Further discussion ensued on this item.

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Mr. Bregard said that he would approve the 10ft. setback and the 6ft. fence if they agreed to add angled parking.

Mr. Conley reminded him that this would be allowed by Code without the need for a variance. Additionally, a reduction in the drive aisle width had not been requested in the application.

Mr. Brauner said that she agreed with the applicant, and felt that the opacity for the proposed fence would not cause a sight line problem for traffic. She felt that their hardship would be that a 4ft. fence would be easy to climb over and would not provide adequate security for the company.

Mr. Kostrzewa noted that there are several large employers in the City who have no fences at all and only have security guards and other measures on site. He believes that a fence of this height would be granting a special privilege to this company. He had not seen or heard anything in this application that would justify granting this variance.

A second motion was made on this item.

Moved Brauner/Maynard to approve VAR2025-0002, as presented, as the application meets the six factors for granting a variance.

Aye: Jackson, Cass, Brauner & Maynard

Nay: Bregard, Cope & Kostrzewa

Motion failed.

Mr. Kostrzewa asked if the Board had a substitute motion for this item.

No additional motion was put forth at this time.

Mr. Conley explained that if no substitute motion was made; the item will be recorded as “The motion to approve failed – motion closed”. He asked the Board to consider another alternative.

A brief discussion ensued on the options available to the applicant if no substitute motion was made. Mr. Conley explained that City Code requires five affirmative votes for a variance to be granted which has not been met. Without a substitute motion, the motion would fail and the applicant would have to wait 6 months to re-apply.

Mr. Kostrzewa said that the applicant also has the option to elevate his request to a Circuit Court.

Mr. Conley agreed with Mr. Kostrzewa, noting that the Court’s decision would be based on the final action and record created at this meeting.

The Board’s options were discussed which included consideration of the height of the fence and setbacks and opacity of the fence.

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Ms. Brauner asked what the minimum setback would be to still allow for the 90-degree parking spaces. She also asked if the motion needed to state a specific setback.

Mr. Higgins clarified that in order to keep the 90-degree parking spaces, a 24ft. wide drive aisle would be required. Based on the measurements he took when visiting the site, a 1ft. setback would allow for the required 24ft. drive width.

A discussion took place between Mr. Higgins and Mr. Conley on the verbiage for an approval with conditions, and what would be required to ensure that it would be a variance that could be maintained through time. It was agreed that the wording should include “to maintain a setback to preserve the necessary drive aisle width and the application what that drive aisle width was, dependent on whether they have the 90-degree parking versus angled parking”.

Mr. Higgins confirmed that this verbiage would be acceptable, however, it was still against staff’s recommendation. The applicant would still need to provide an accurate survey showing that the setback for the fence will still maintain the required drive aisle width. If it is reduced below 24ft., they will need to provide angled parking.

A third substitute motion was made by the Board.

Moved Brauner/Bregard to find that the application meets the six criteria required to grant a variance to the setback requirement; to reduce it from 10ft. on the condition that the fence location preserves the necessary drive aisle width, as evidenced by survey with such drive aisle width dependent upon whether the parking is in a 90-degree back-out alignment or an angled parking alignment.

A Roll Call vote was taken:

Aye: Jackson, Cass, Brauner, Bregard, Maynard, & Cope

Nay: Kostrzewa

Motion carried.

C. Future/Additional Business

As Mr. Shah was not present, it was agreed that his service pin would be presented at a future meeting.

D. Adjournment

As there was no further business to discuss, the meeting was closed at 8.10 pm.



Samantha Buck, Recording Secretary – July 28, 2025

Approved by Zoning Board of Adjustment: _____

Memorandum

To: Zoning Board of Adjustment
From: Todd Corwin, Planner, AICP
Thru: Cheryl Dean, Planning Manager, AICP
Re: Variance Request (VAR2025-0004) – 424 S. Babcock Street
Date: March 20, 2026

Owner/Applicants

Scott McClellan/MEN-SA Investments, LLC

Representative:

Kelly Delmonico, AICP

Proposed Variance

In a C-1 Zoning District, the following variance is requested: Variance of 7.2 feet to allow a 12.8-foot side corner lot setback.

City Code Reference

The Zoning Code contains standards for setbacks adjacent to roadway frontages. These setbacks are established for visibility, safety (sight triangle), and aesthetic reasons. Specific setback requirements are established for every zoning district in the City. For the C-1 Zoning District, the side corner setback is 20 feet. This 20-foot side corner setback is standard for most commercial and industrial zoning districts. This setback provides motorists with ample space and visibility to see other vehicles, pedestrians, and bicycles when making turning movements.

Part III, Appendix B, Article V, Section 2, Table 2B requires a 20-foot side corner lot setback in the C-1 (Neighborhood Commercial) Zoning District. The subject property has a 20-foot side corner lot setback along Nieman Avenue. The applicant wishes to construct a building addition that extends 7.2 feet into this side corner setback.

Location:

The subject site is located on the west side of Babcock Street, at the intersection of Nieman Avenue in Range 28, Township 37, Section 4 (424 S. Babcock Street). A commercial building is currently located on this site.

Property/Adjacent Property Information

The subject property is designated General Commercial and is zoned C-1 (Neighborhood Commercial District).

Access:	Babcock Street along the east property line and Nieman Avenue along the west property line.
To the East:	Commercial property (across Babcock Street)
Zoning:	C-C-1 (Conditional Use for the on-premise consumption of alcoholic beverages)
Land Use:	General Commercial
To the West:	Parking lot
Zoning:	M-1 and C-2
Land Use:	General Commercial
To the North:	Commercial property and single-family home
Zoning:	C-1
Land Use:	Mixed Use
To the South:	Commercial building (across Nieman Avenue)
Zoning:	C-2
Land Use:	General Commercial

The subject property is located in a commercial area and is bordered on four sides by other commercial properties that are zoned either C-1, C-2, or M-1. A single-family house site that is zoned C-1 is also located to the north. The subject land borders Babcock Street to the east and Nieman Avenue to the west.

History:

The subject property (approximately 0.30 acres) is described as the south one half of Lot 287 and all of Lots 288 and 289, Indian River Bluff No. 3 Subdivision (recorded in 1926). A commercial building is located on this site. The existing C-1 zoning district is the original zoning conferred upon the subject property.

In 1984, an appeal to the Building Official's interpretation of the City Zoning Ordinance that an auto rental business is a change of use from a used car sales business was reviewed by the Zoning Board of Adjustment (ZBOA). The appeal was denied due to only four of the Board members voting in favor of the appeal.

In 2025, a Commercial Alteration Building Permit (CALT2025-00854) for a fence was submitted by the property owner. Two conditions of approval were tied to this permit. The first condition stated that parking and landscape site improvements were required before business occupancy of the site and the second condition noted that no outdoor storage was permitted on this property.

Variance Purpose

A variance provides relief from zoning code requirements when strict compliance would result in unique difficulties for a property owner. For variance purposes, such difficulties

are referred to as a hardship. A hardship is a condition that must relate to special circumstances or conditions specific to a particular property. Typical variance requests are for relief from setback, building height, parking, location criteria, and landscaping requirements. The requested variance must be the minimum necessary to grant relief and cannot confer a special privilege when compared to nearby properties. Economic or self-imposed conditions do not constitute justification for a variance request.

Staff Review of Variance Criteria: Part III, App. B, Art. IX, Sec. 7(A)

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved that are not applicable to other lands, buildings, or structures in the same zoning district.

The subject property is located on land that has frontage on two streets. This condition is not an uncommon occurrence within the city (especially at roadway intersections).

The existing building is nonconforming to the side corner lot setback for the C-1 district. In older sections of the city (the building on site was constructed in 1959), structures may not have been constructed to current zoning regulations.

When a C-1 property abuts another commercial zoned property, the required side setback is zero.

Based on the location of the existing building and the angled nature of the adjacent roadways, the building addition proposed by the applicant does not appear to affect site visibility.

2. That the literal interpretation of the provisions of the zoning ordinance deprive the applicant of rights commonly enjoyed by other properties in the same zoning district resulting in an unnecessary and undue hardship.

Since the side lot setback for the subject property is zero, adequate space is available to construct a building addition that meets all required setback requirements (see attached Exhibit 1).

Access to the rear portion of this site is not improved with pavement. Per City Code, all vehicular use areas must have a surface of concrete or pavement.

The existing building is nonconforming to the side corner lot setback along the frontage of Nieman Avenue. The building meets all other required building setbacks for the C-1 zoning district.

3. That the special conditions and circumstances referred to in #1 do not result from the actions of the applicant.

The commercial building on this site was constructed in 1959 before the commencement of zoning regulations within the city.

The owners of this site purchased the property in 2025, 66 years after construction of the commercial structure on the subject land (1959).

4. That granting the variance requested will not confer on the applicant any special privilege that is denied by the zoning ordinance to other lands, structures, or buildings in the same zoning district.

A building addition could be constructed at the north side of the existing building on this site. A building addition in this area would meet the required front, side corner, and side setbacks for the C-1 district.

The construction of a building addition on the subject property will require that the site be brought up to current standards for landscaping and parking.

5. That the reasons set forth in the application justify granting the application and that the variance being requested be the minimum variance that will make possible the reasonable use of the subject land, structure, or building.

Sufficient space is located on the northern portion of the subject property to build an addition that meets all required building setbacks.

The building on this site is nonconforming to the required side corner setback adjacent to Nieman Avenue.

6. That the granting of the variance requested be in harmony with the general intent and purpose of the zoning ordinance and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The location of the proposed building addition is within the required side corner lot setback for the C-1 District.

Sight visibility along Nieman Avenue does not appear to be affected by the building addition proposed by the property owner.

Variance Analysis

The applicant is requesting a 7.2-foot variance to the C-1 side corner setback. This site is located between Nieman Avenue and Babcock Street. The applicant's responses to the variance criteria are attached to this memorandum.

A 2,480 square foot commercial building is located on the subject property. This building was constructed in 1959, before the advent of zoning regulations in the City. The existing building meets the required setbacks from the side lot line and the front lot line; however, the building is nonconforming to the required side corner lot setback. Based on the location of the existing building and because the side setback to the north is zero (where the site abuts another commercial lot), an addition to the northern side of the structure could be designed to comply with all required setbacks. Consequently, staff

cannot support the variance request due to the lack of a hardship as set forth in City Code.

The subject site is non-conforming to current parking and landscaping standards. The construction of any building addition on the subject property or a change of use permit will require that the entire site be improved to meet current landscaping and parking standards. Such improvements would yield local benefits by bringing a highly visible nonconforming corner lot into compliance with City Code for parking and landscaping standards.

Recommendation:

Based on the failure to meet the six factors for granting a variance (as set forth in City Code), for property located on the west side of Babcock Street, at the intersection of Nieman Avenue (424 S. Babcock Street), the Community Development Department recommends **Denial of VAR2025-0004**.

Memorandum

To: Zoning Board of Adjustment
From: Todd Corwin, Planner, AICP
Thru: Cheryl Dean, Planning Manager, AICP
Re: Variance Request (VAR2025-0005) – 2307 Greenway Drive
Date: March 20, 2026

Owner/Applicants

Branimir Cetkovic and Jarin Eisenberg

Representative:

Kelly Delmonico, AICP

Proposed Variance

In a R-1AA Zoning District, the following variance is requested: Variance to allow a swimming pool in a side yard (south side yard).

City Code Reference

The Zoning Code contains standards for Accessory and Temporary Uses and Structures. Specific standards are established for the construction of swimming pools on a property. These standards include property line setbacks, structure separation, and location on a lot. The applicant is requesting a variance to the location on a lot requirement. Specifically, Part III, App. B, Article VII, Section 2(M)(1)(a) requires a swimming pool to be placed in the rear yard when a lot has frontage on one (1) street. The subject property only has frontage on Greenway Drive.

Location:

The subject site is located on the east side of Greenway Drive, approximately 225 feet south of Devonshire Drive and 500 feet west of Babcock Street in Section 28, Township 37, Section 4 (2307 Greenway Drive). A single-family residence is currently located on this site.

Property/Adjacent Property Information

The subject property is designated Low Density Residential (LDR) and is zoned R-1AA (Single Family Low Density Residential District).

Access: Greenway Drive, along the west property line

To the East: Single-family residential home
Zoning: R-1AA
Land Use: LDR

To the West: Single family home
Zoning: R-1AA
Land Use: LDR

To the North: Single family home
Zoning: R-1AA
Land Use: LDR

To the South: Single family home
Zoning: R-1AA
Land Use: LDR

The subject property is located in a residential area and is surrounded on all four sides by other residential properties that are also zoned R-1AA. This property borders Greenway Drive (a local road), on a curved portion of the roadway.

History:

The subject property (approximately 0.26 acres) is described as lots 164 and 165, in the Country Club Colony Subdivision (recorded in 1925). A single-family home (constructed in 1975) is located on this site. The existing R-1AA zoning district is the original zoning conferred upon the subject property.

Variance Purpose

A variance provides relief from zoning code requirements when strict compliance would result in unique difficulties for a property owner. For variance purposes, such difficulties are referred to as a hardship. A hardship is a condition that must relate to special circumstances or conditions specific to a particular property. Typical variance requests are for relief from setback, building height, parking, location criteria, and landscaping requirements. The requested variance must be the minimum necessary to grant relief and cannot confer a special privilege when compared to nearby properties. Economic or self-imposed conditions do not constitute justification for a variance request.

From a compatibility perspective, a rear yard location protects neighboring properties from associated impacts such as noise, lighting, etc. The location of pools in rear yards also provides a safety factor by making the pool less accessible to young children. Finally, the placement of pools in a rear yard contributes to a uniform visual perspective along the street frontage and enhances the aesthetic appeal of the neighborhood.

Staff Review of Variance Criteria: Part III, App. B, Art. IX, Sec. 7(A)

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved that are not applicable to other lands, buildings, or structures in the same zoning district.

The subject property is located on two lots with an irregular configuration and the house is not parallel to any one lot line or yard. The arc created by the curved portion of Greenway Drive results in the single-family residence and the associated rear porch on this site being located closer to the rear property line. The required front yard setback for the R-1AA District is 30 feet.

An electrical line is located along the rear property line. A service line to the residential structure is located across a portion of the southern rear yard (see attached exhibit from the applicant).

Since the subject property is located on two platted lots, the single-family home on this site is located further away from its southern side lot line. This factor results in the largest amount of vacant space being located between the house on site and the southern side lot line.

The northern portion of the rear yard is shaded by trees on the adjacent lot. Locating the proposed pool in the southern side yard will alleviate this shading factor.

2. That the literal interpretation of the provisions of the zoning ordinance deprive the applicant of rights commonly enjoyed by other properties in the same zoning district resulting in an unnecessary and undue hardship.

The irregular shaped property results in a narrow and compressed rear yard area and a large southern side yard.

A service electrical line is located over the southern portion of the rear yard. This line connects to the southeast corner of the house.

The subject site consists of two platted lots of record. This factor results in a sizeable southern side yard.

3. That the special conditions and circumstances referred to in #1 do not result from the actions of the applicant.

The single-family residence on this site was constructed in 1975 with a 30-foot required setback from the front property line.

The owners of this site purchased the property in 2020, 45 years after construction of the house on the subject land (1975); therefore, the location of the house was not the result of their actions.

4. That granting the variance requested will not confer on the applicant any special privilege that is denied by the zoning ordinance to other lands, structures, or buildings in the same zoning district.

The location of the residential home on the subject site on this irregularly shaped property results in a substantial structure separation distance from the neighboring house to the south.

The proposed variance will permit the owners to construct a pool in a sunny area of the subject property and away from electrical power lines.

5. That the reasons set forth in the application justify granting the application and that the variance being requested be the minimum variance that will make possible the reasonable use of the subject land, structure, or building.

The proposed pool will be located entirely in the side yard and rear yard and will not encroach into the front yard of the subject property.

A substantial portion of the proposed swimming pool (the eastern 11 feet) will be located behind the rear building line of the house on site.

6. That the granting of the variance requested be in harmony with the general intent and purpose of the zoning ordinance and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The proposed location of the swimming pool is in the largest open area on the subject property (the southern side yard).

The proposed pool will be located entirely in the side and rear yard and will not encroach into the front yard of the subject property.

Variance Analysis

The applicant is requesting a side yard location for a swimming pool. The subject property consists of two platted lots. City Code limits the construction of swimming pools with frontage on one street to rear yard locations for compatibility, aesthetic, and safety reasons. The applicant's responses to the variance criteria are attached to this memorandum.

This site is irregularly shaped due to its location on a curved portion of Greenway Drive and the house is not parallel to any one lot line or yard. The proposed pool will be located entirely in the side and rear yard and will not encroach into the front yard of the subject property. The location proposed by the applicant will be away from electrical power lines. In addition, the location of the residential home on this irregularly shaped site results in a substantial structure separation distance from the neighboring house to the south. Consequently, staff can support the variance request due to the hardship created by the irregularly shaped lot conditions and the location of the electrical power lines to the rear of the property.

Recommendation:

Based on an analysis of the variance criteria as set forth in City Code, for property located on the east side of Greenway Drive, approximately 225 feet south of Devonshire Drive and 500 feet west of Babcock Street in Section 28, Township 37, Section 4 (2307 Greenway Drive), the Community Development Department recommends **Approval of VAR2025-0005** with the following conditions:

1. As presented on Exhibit 1 (in the south side yard); and
2. The pool must meet all applicable Code required setbacks.