



## Memorandum

**TO:** Development Review Board

**FROM:** Eric Vorwald, AICP  
Planning & Zoning Manager

**RE:** **Waiver Request – 165 East Spring Street**

**DATE:** June 16, 2022

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In accordance with Section 6.8 of the Unified Land Use and Development Regulations (ULUDR) for the City of Winooski, (effective April 11, 2022), the following is provided as information regarding a dimensional waiver request for property located at 165 East Spring Street. The applicant is requesting a dimensional waiver as part of a minor subdivision. The property under consideration is currently developed with a two-unit dwelling that is located within the required 10 foot sideyard setback. In order for the subdivision to be approved, each lot created will need to conform to the dimensional standards outlined in Section 2.5 of the ULUDR. Conformity with the dimensional standards applies to any existing structures that will remain if the subdivision is granted.

Section 6.8 provides the standard of review for evaluating a dimensional waiver request. Specifically, Section 6.8 includes:

- B. **Dimensional Waivers.** The DRB, in association with site plan or conditional use review, or on appeal of a ZA's determination, may reduce the minimum district setback requirements (under Table 2.5) or minimum surface water and wetland setbacks (under Section 4.8) in accordance with the Act [§4414] and the following requirements.
1. *A waiver request, including information regarding the specific circumstances, need and justification for the waiver shall be submitted in writing with the application for site plan or conditional use review.*

### Relationship to Standard

Specific information regarding the nature of the request has been submitted and is included with the agenda packet. This includes the subdivision plan and a narrative outlining the specific dimensional waiver being requested. In general, the applicant is requesting relief from a sideyard setback to allow the property to be subdivided. The property is currently developed with a two-unit dwelling that encroaches into the sideyard setback. The relief would be necessary to grant the subdivision and to allow the existing structure to remain in its current configuration.

2. *A waiver under this section may be granted by the DRB only as necessary to:*
  - a. *Allow for the reasonable development and use of a pre-existing nonconforming lot under Section 4.9.*
  - b. *Allow for additions or improvements to a pre-existing nonconforming structure under Section 4.9.*
  - c. *Comply with federal or state public health, safety, access and disability standards.*
  - d. *Allow for the siting of renewable energy structures.*

#### Relationship to Standard

The applicant is proposing a two lot subdivision. The subject property is currently developed with a primary structure containing two dwelling units, and a multi-bay garage at the rear of the property. The two unit dwelling is currently located within the sideyard setback and therefore does not conform to the current ULUDR. The applicant is not proposing any changes to the two unit dwelling as part of the subdivision.

The waiver, if granted, would allow the encroachment of the existing two unit dwelling to provide the needed relief for the subdivision to occur. The dimensional standards are outlined in Section 2.5. This waiver request would qualify under item b above as it relates to a non-conforming structure, however no improvements or modifications to the structure are planned as part of this application. If changes were to be considered, this would require a separate application.

3. *The minimum required setback distance shall be reduced by no more than 50% under this provision. Variance approval under Section 6.8 shall be required for any further reduction in dimensional requirements.*

#### Relationship to Standard

The required minimum sideyard setbacks in the R-C Zoning District for a primary structure is 10 feet. The current two unit dwelling encroaches into the setback by 2.5 feet leaving a setback of 7.5 feet. If the waiver were to be granted, this would be a 25% reduction to the setback.

4. *In granting a waiver under this section, the DRB shall find, based upon clear and convincing evidence of a specific need and circumstances that:*
  - a. *No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.*
  - b. *The reduced setback is not contrary to public health, safety and welfare, stated objectives and policies of the Winooski Municipal Development Plan, or the intent of these regulations.*
  - c. *The waiver represents the minimum setback reduction necessary to allow for the proposed development.*

- d. Any potential adverse impacts resulting from reduced setback on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, or other accepted mitigation measures.*

#### Relationship to Standard

The existing two unit dwelling located at 165 East Spring Street is considered a pre-existing non-conforming structure since it encroaches into the sideyard setback. The applicant is not proposing any changes or modifications to the existing structure. The waiver, if granted, would bring the structure into conformity with the current land use regulations in regard to the sideyard setbacks. The proposed waiver does not appear to have any conflicts or adverse impacts on the items listed above as it is not being requested to accommodate new development.

#### Conclusion/Recommended Action

The Development Review Board should consider the request to reduce the minimum sideyard setback requirements to permit subdivision of the property, resulting in a lot with existing structures that conforms to the dimensional standards as outlined in Section 2.5.