



# AGENDA

## Zoning Board of Adjustment - Public Hearing

4:00 PM - April 27, 2020  
Zoom Conference

Page

### I. REMOTE PUBLIC HEARING

Please note that this public hearing will be conducted remotely, with access to the public hearing provided through Zoom video conferencing software. This hearing may be viewed via Channel 16, or online at [www.loveland.viebit.com](http://www.loveland.viebit.com).

### II. CALL TO ORDER

This Hearing will be conducted by Zoning Board of Adjustment Hearing Officer Milo Hovland.

### III. REGULAR AGENDA

1.	<b>2004 W. Eisenhower Boulevard [PZ #19-00221] - <i>Approximate start time 4:00 PM</i></b>	5 - 17
----	--	--------

This is a public hearing to consider a variance request to reduce the required 25 foot front setback in the B-Developing Business District to 6 feet in order to accommodate redevelopment of the subject parcel for 2 drive-through uses and a third commercial tenant. The subject parcel is shallow in depth, which makes commercial development challenging and compliance with setback requirements infeasible.

City staff believes the findings listed in the Staff report dated April 27, 2020 can be met and is recommending approval.

[2004 W Eisenhower ZBA Staff Report](#)  
[2004 W. Eisenhower Variance Presentation](#)

2.	<b>1229 E. 3rd Street - Accessory Dwelling Unit [PZ# 20-00015] - <i>Approximate start time 4:30 PM</i></b>	18 - 46
----	--	---------

This is a public hearing to consider a variance request for a reduction of the rear and side yard setback to allow for an accessory dwelling unit to remain in place.

City staff believes the findings listed in the Staff report dated April 27, 2020 can be met and is recommending approval.

[1229 E 3rd Street ZBA Staff Report](#)

## 1229 E 3rd Street Presentation

### IV. ADJOURNMENT

#### **Notice of Non-Discrimination**

It is the policy of the City of Loveland to provide equal services, programs and activities without regard to race, color, national origin, creed, religion, sex, sexual orientation, disability, or age and without regard to the exercise of rights guaranteed by state or federal law. It is the policy of the City of Loveland to provide language access services at no charge to populations of persons with limited English proficiency (LEP) and persons with a disability who are served by the City.

For more information on non-discrimination or for translation assistance, please contact the City's Title VI Coordinator at [TitleSix@cityofloveland.org](mailto:TitleSix@cityofloveland.org) or 970-962-2372. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act (ADA). For more information on ADA or accommodations, please contact the City's ADA Coordinator at [ADACoordinator@cityofloveland.org](mailto:ADACoordinator@cityofloveland.org) or 970-962-3319 .

#### **Notificación en contra de la discriminación**

La política de la Ciudad de Loveland es proveer servicios, programas y actividades iguales sin importar la raza, color, origen nacional, credo, religión, sexo, orientación sexual, discapacidad, o edad y sin importar el uso de los derechos garantizados por la ley estatal o federal. La política de la Ciudad de Loveland es proveer servicios gratis de acceso de lenguaje a la población de personas con dominio limitado del inglés (LEP, por sus iniciales en inglés) y a las personas con discapacidades quienes reciben servicios de la ciudad.

Si desea recibir más información en contra de la discriminación o si desea ayuda de traducción, por favor comuníquese con el Coordinador del Título VI de la Ciudad en [TitleSix@cityofloveland.org](mailto:TitleSix@cityofloveland.org) o al 970-962-2372 . La Ciudad hará acomodaciones razonables para los ciudadanos de acuerdo con la Ley de Americanos con Discapacidades (ADA, por sus iniciales en inglés). Si desea más información acerca de la ADA o acerca de las acomodaciones, por favor comuníquese con el Coordinador de ADA de la Ciudad en [ADACoordinator@cityofloveland.org](mailto:ADACoordinator@cityofloveland.org) o al 970-962-3319 .

Title VI and ADA Grievance Policy and Procedures can be located on the City of Loveland website at: [cityofloveland.org](http://cityofloveland.org)

*Password to the public wireless network (colguest) is accesswifi*

## **ZONING BOARD OF ADJUSTMENT**

### **VARIANCE HEARING PROCESS**

#### **Public Hearing Procedures**

The purpose of a public hearing is for the Zoning Board of Adjustment (ZBA) to obtain full information as to the matter under consideration. This includes giving all interested parties the opportunity to speak (provide testimony) at the hearing. The public hearing is a formal process that is typically conducted by a hearing officer appointed by the Loveland Planning Commission. Below is the hearing sequence as followed by the hearing officer.

##### **REMOTE PARTICIPATION:**

**Please note that this public hearing will be conducted remotely, with access to the public hearing provided through Zoom video conferencing. To participate in the meeting, please call (253) 215-8782 or (301) 715-8592. When prompted, enter meeting ID: 763 517 268**

- **The moderator will ask for each caller's name and address, which will be recorded, and will confirm their phone number. The moderator will ask each caller whether they wish to speak during public comment. When the public comment portion of the hearing begins, the moderator will unmute each caller in order, and the caller will be given three minutes to speak.**
- **The hearing may be viewed live online via [www.loveland.viebit.org](http://www.loveland.viebit.org) and on television via Channel 16.**

#### **1. Variance item is recognized by the Hearing Officer**

*(Hearing Officer will describe the remote participation process.)*

#### **2. Staff presentation**

*(City Planning staff provides an introduction, a summary of the requested variance and a recommended motion for approval or denial. The staff powerpoint and report were made available to the public upon request and on the City's website. Staff will share their powerpoint via screen share for the video participants.)*

#### **3. Applicant presentation**

*(Applicant or Applicant's representative introduce themselves, explain the variance request, and present the case in support of the variance request. Any materials to be presented by the Applicant were provided to the City prior to the hearing and have been made available to the public upon request and on the City's website. The City will pull up those materials (if any) via screen share for viewing.)*

#### **4. Public comment**

*(The Hearing Officer will allow each caller to speak in turn and will set a time limit for all speakers. The moderator will unmute the caller whose turn it is to speak and will mute them when their time limit is up. Callers should introduce themselves and provide their name. All questions and comments should be directed to the Hearing Officer. The Hearing Officer will direct any questions to staff or to the applicant after closing public comment.)*

#### **5. Close public comment**

*(No more public questions or comments are considered from this point forward. All callers will remain muted for the remainder of the hearing.)*

#### **6. Applicant or staff response**

*(The Hearing officer directs any questions to City staff or the Applicant, as appropriate. The City will share any pertinent materials on behalf of City staff or the Applicant if requested.)*

#### **7. Hearing Officer states decision**

*(The Hearing Officer may approve, approve with conditions, disapprove, continue the hearing to a specific date, or forward the matter to the full Zoning Board of Adjustment.)*

**\* Note that the Hearing Officer may place time limits on presenters. All presenters should communicate clearly and concisely, refraining from duplicating detailed information that has been provided by others.**

# Zoning Board of Adjustment Staff Report

April 27, 2020

<b>AGENDA ITEM #1</b>		<b>PZ# 19-221</b>
<b>Project Name:</b>	2004 W. Eisenhower Boulevard	
<b>Request:</b>	Reduction of the required front yard from 25 feet to 6 feet to accommodate redevelopment of this site	
<b>Applicant:</b>	Rob Woodward / Chad Arthur	

## RECOMMENDED MOTION(S):

*Move that the findings beginning on page 5 of this staff report, dated April 27, 2020, can be made and approve the proposed variance to Section 18.04.03.01.B of the Loveland Municipal Code.*

## Variance Overview

The applicant is seeking a variance to reduce the required 25 foot front setback in the B – Developing Business District to 6 feet in order to accommodate redevelopment of the subject parcel for 2 drive through uses and a third commercial tenant. The subject parcel is shallow in depth, which makes commercial development challenging and compliance with setback requirements infeasible.

## VICINITY MAP



## Site Data

<b>Address/Location:</b>	2004 W. Eisenhower Boulevard/South side of W. Eisenhower between Van Buren Avenue and Broadmoor Drive
<b>Subdivision:</b>	Westmount Acres Addition
<b>Land Area:</b>	0.75 acres/32,870 square feet
<b>Existing Buildings:</b>	Vacant
<b>Vehicular Access:</b>	W. Eisenhower Boulevard
<b>Water Provider:</b>	City of Loveland
<b>Wastewater Provider:</b>	City of Loveland
<b>Electric Provider:</b>	City of Loveland
<b>Gas Provider:</b>	Xcel Energy
<b>Floodplain:</b>	No

## Zoning and Existing Land Uses

	Existing Zoning	Existing Land Use
<b>Subject Property</b>	B-Developing Business	Vacant
<b>Adjacent North</b>	B-Developing Business	Commercial
<b>Adjacent South</b>	R1e-Established low density residential	Single family homes
<b>Adjacent East</b>	B-Developing Business	Commercial
<b>Adjacent West</b>	B-Developing Business	Commercial

<b>Report Attachments</b>	
1. Application and Justification Statement	
2. Site Plan	
<b>Development Review Team Contacts</b>	
<b>Current Planning:</b>	Jennifer Hewett-Apperson

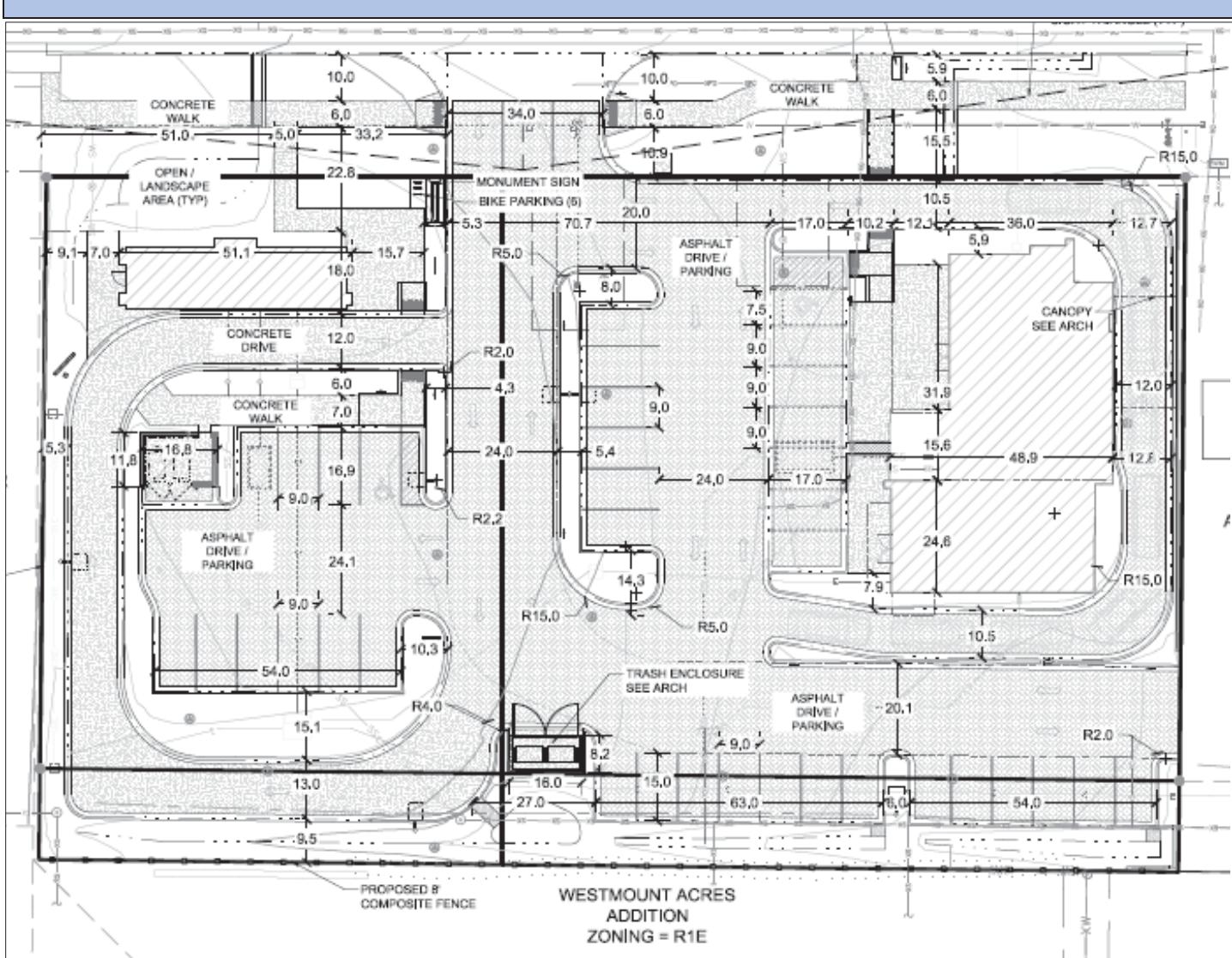
## **PROJECT SUMMARY**

The applicant is seeking a variance to reduce the required 25 foot front setback established in Table 18.04.03.01.B of the Unified Development Code for the B – Developing Business district to 6 feet in order to accommodate redevelopment of the subject parcel for 2 drive through uses and a third commercial tenant. The subject parcel is shallow in depth, which makes full compliance with setback requirements infeasible.

This property is in the West Eisenhower Reinvestment Zone (WERZ), which offers fee waivers for renovation of existing buildings and construction of new commercial buildings along West Eisenhower Boulevard between Taft Avenue and Wilson Avenue. The WERZ designation was established to help facilitate reinvestment. Commercial buildings on this corridor tend to be older. Widening of West Eisenhower over the years has resulted in diminished building setbacks. This has resulted in a pattern of commercial buildings that are closer to the street. The requested front yard reduction would be in keeping with the character of the existing development pattern in the immediate vicinity.

This site previously contained a gas station and convenience store that had been vacant for many years and was known as a place where members of the homeless population would break into for shelter. The applicant proposes 2 new buildings for this property: a drive through coffee kiosk and a second building that would have a drive through Subway restaurant and an additional commercial storefront. The drive aisle for the Subway would be located in the reduced front yard, as would the front bufferyard for the coffee kiosk. Given stacking requirements for drive through facilities as well as required parking and landscaping, full compliance with the required 25 foot front setback in the B zone would render the development proposal infeasible.

## Site Plan



## Aerial view of property



Neighborhood Outreach	
<b>Notification:</b>	The applicant submitted an affidavit stating that the required sign was posted and letters to neighboring property owners were sent on April 11, 2020, in compliance with the required notification established in the Unified Development Code.
<b>Neighborhood Response:</b>	At the time this report was prepared, Planning staff had not received any communications from the neighbors.

Zoning Board of Adjustment Criteria and Findings for Approval	
Pursuant to Section 18.17.15.07.B. of the City of Loveland Municipal Code, the Zoning Board of Adjustment shall consider and make findings regarding the following criteria for variance requests. All criteria must be met in order to approve the requested variance.	
	<b>Criteria</b>
	<ol style="list-style-type: none"> <li>1. Granting the variance will not substantially conflict with any adopted plans or policies of the City, or the purposes or intent set out in this Code;</li> </ol>
<i>Finding: Staff believes that this finding CAN be met</i>	<i>Analysis: The requested variance does not conflict with any adopted plans or policies of the City other than the setback regulations.</i>
	<ol style="list-style-type: none"> <li>2. There are exceptional conditions creating an undue hardship, applicable only to the property involved, or the intended use thereof, which do not generally apply to the other land areas or uses within the same zone;</li> </ol>
<i>Finding: Staff believes that this finding CAN be met</i>	<i>Analysis: The subject property is very shallow and difficult to redevelop as a commercial use as allowed by the B--Established Business District zoning. Absent a setback variance, the widening of West Eisenhower has rendered redevelopment of the subject property infeasible.</i>
	<ol style="list-style-type: none"> <li>3. The Applicant cannot derive a reasonable use of the property without approval of a variance;</li> </ol>
<i>Finding: Staff believes that this finding CAN be met</i>	<i>Analysis: If the 25 foot setback were complied with, more than 25% of the parcel would not be developable, which would make this project not economically viable, and similar commercial redevelopment projects, infeasible.</i>
	<ol style="list-style-type: none"> <li>4. Granting the variance will not generally set a precedent for other applications (which would indicate that a text amendment to this UDC should be proposed and considered instead);</li> </ol>
<i>Finding: Staff believes that this finding CAN be met</i>	<i>Analysis: The shallow lot depth of this parcel is not a common feature of commercially zoned properties in Loveland, therefore, granting this variance would not generally set a precedent for similar applications.</i>
	<ol style="list-style-type: none"> <li>5. Granting the variance will not be detrimental to any adjacent properties or the area;</li> </ol>
<i>Finding: Staff believes that this finding CAN be met</i>	<i>Analysis: This property has been vacant for many years. Granting this variance will facilitate its redevelopment, which will ultimately benefit adjacent parcels and the West Eisenhower area.</i>

**6. Granting the variance will not be detrimental to public health, safety, or welfare; and**

*Finding: Staff believes that this finding CAN be met*

*Analysis: There is no evidence that the public health, safety, or welfare would be impacted by the requested variance.*

**7. Adequate relief cannot be reasonably obtained through a different procedure, such as the application of alternative compliance standards, if applicable.**

*Finding: Staff believes that this finding CAN be met*

*Analysis: The variance process is the only applicable process for this case.*

**Staff Recommendation**

City staff is recommending approval of the variance application on the basis that the all applicable findings have been met.

Condition:

1. This project shall comply with all other applicable development standards, unless explicitly noted otherwise in subsequent project reviews.

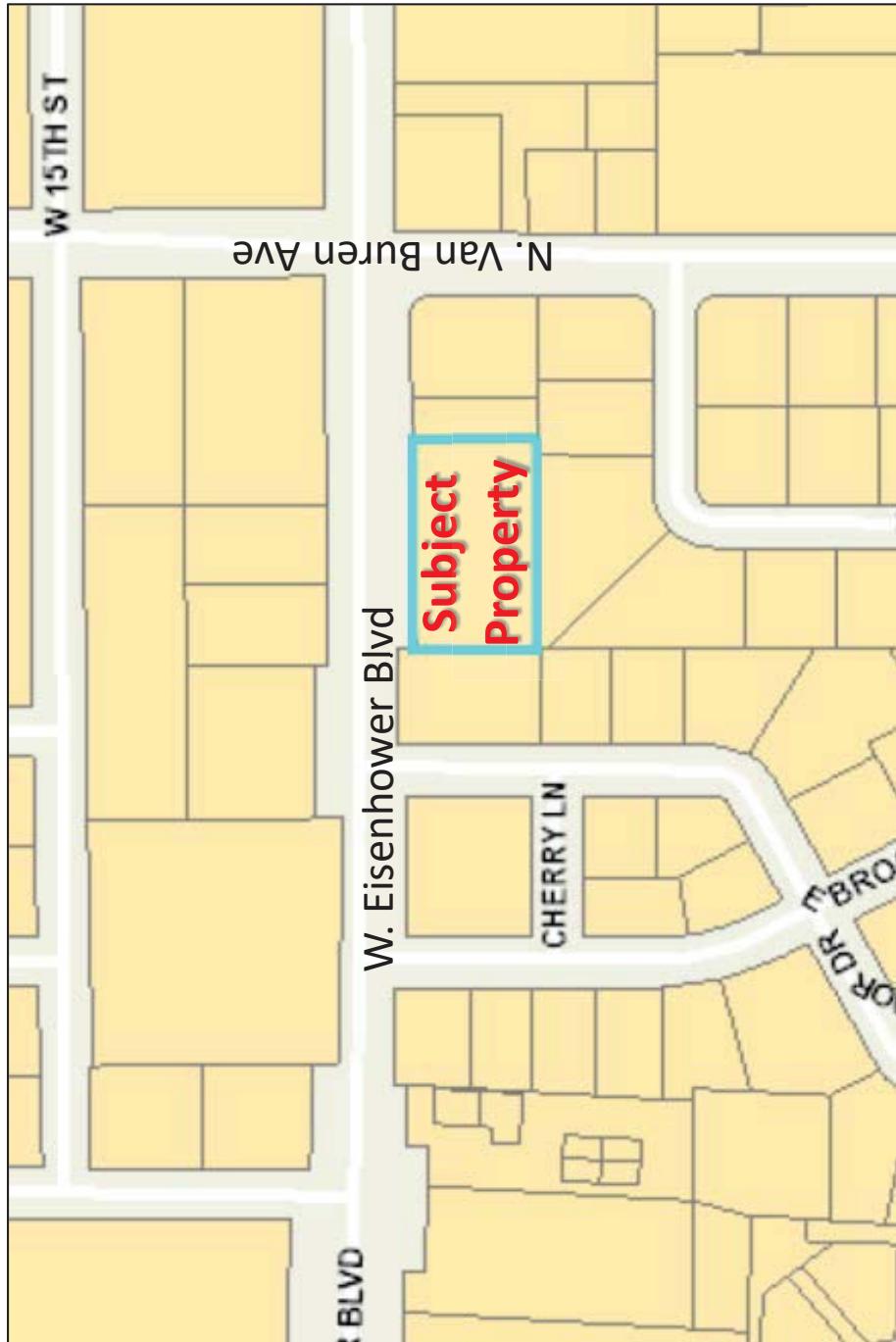
# 2004 W. Eisenhower Variance Request

*Reduce the required front setback in the B zone from 25 feet to 6 feet to enable redevelopment of this site.*



# Location – 2004 W. Eisenhower Blvd.

South side of West Eisenhower Boulevard between Van Buren Avenue and East Broadmoor Drive



# This public hearing is to consider the following:

Required	Proposed
25 foot front setback	6 foot setback to allow for redevelopment of this site with 2 drive through restaurants

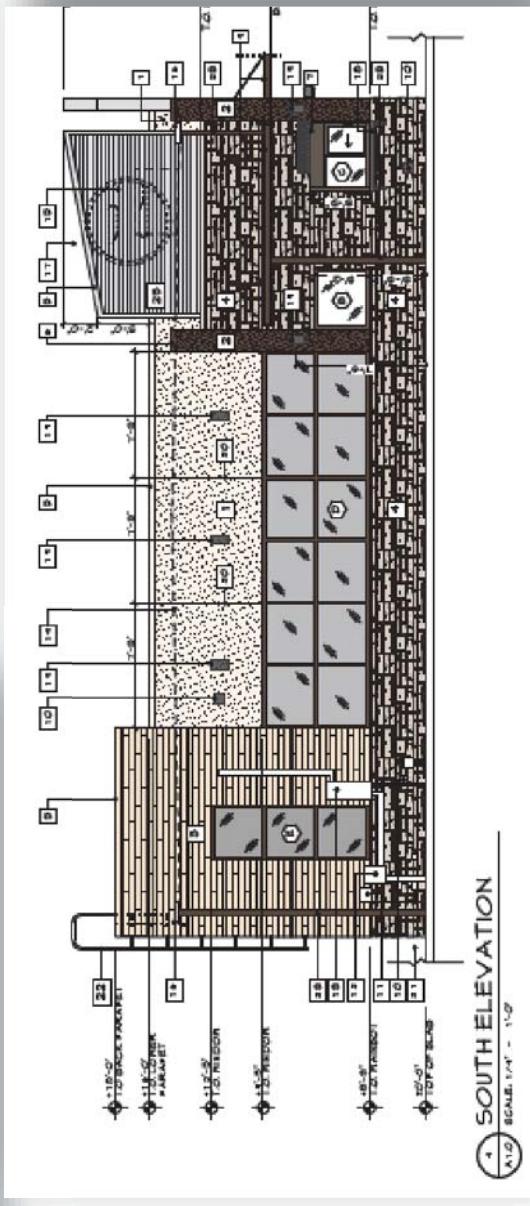


# Project Summary

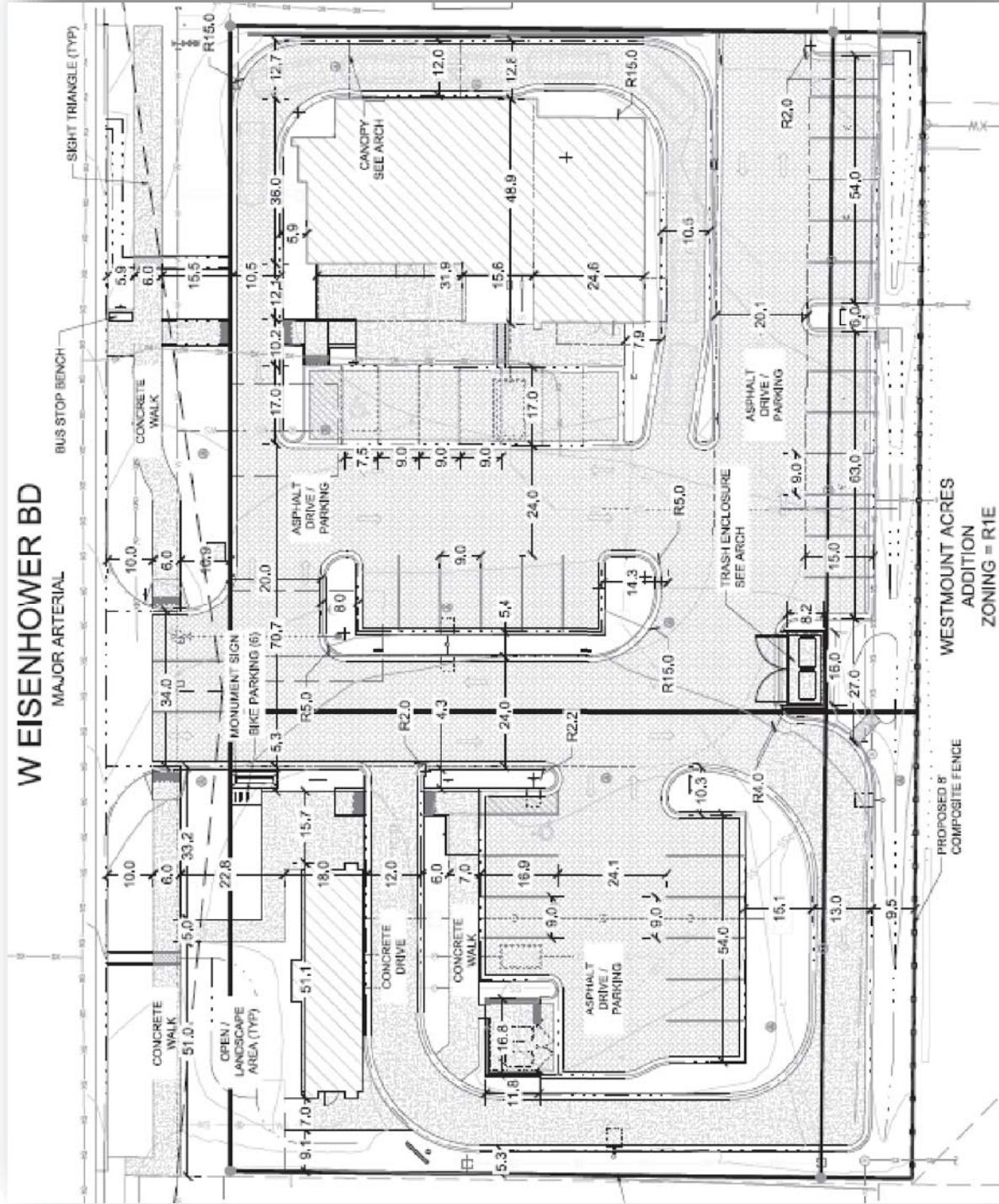
- Redevelopment of property that formerly contained a gas station and has been vacant for many years located at 2004 W. Eisenhower Boulevard
- Proposed Redevelopment to include:
  - Drive through standalone coffee shop
  - Two tenant commercial structure to contain restaurant with drive through



# Proposed Structures



# Proposed Site Plan



# Staff recommendation: Approval – All Findings Met

1. Granting the variance will not substantially conflict with any adopted plans or policies of the City, or the purposes or intent set out in this Code;
2. There are exceptional conditions creating an undue hardship, applicable only to the property involved, or the intended use thereof, which do not generally apply to the other land areas or uses within the same zone;
3. The Applicant cannot derive a reasonable use of the property without approval of a variance;
4. Granting the variance will not generally set a precedent for other applications (which would indicate that a text amendment to this UDC should be proposed and considered instead);
5. Granting the variance will not be detrimental to any adjacent properties or the area;
6. Granting the variance will not be detrimental to public health, safety, or welfare; and
7. Adequate relief cannot be reasonably obtained through a different procedure, such as the application of alternative compliance standards, if applicable.





# Zoning Board of Adjustment Staff Report

April 27, 2020

<b>AGENDA ITEM #2</b>		<b>PZ# 20-00015</b>
<b>Project Name:</b>	1229 E. 3 <sup>rd</sup> Street- Accessory Dwelling Unit	
<b>Request:</b>	Reduction of the rear and side yard setback to allow an accessory dwelling unit to remain in place.	
<b>Applicant:</b>	Emily and Adam Lum	

## RECOMMENDED MOTION:

***Move that the findings listed on page 8 of this staff report dated April 27, 2020 can be made and approve the requested variance to Section 18.04.07.03.B1 of the Loveland Municipal Code, subject to the conditions listed under the Staff Recommendation on page 11 of this report.***

## ALTERNATIVE MOTION:

***Move that the alternative findings listed on page 10 of this staff report dated April 27, 2020 cannot be made and, based on those findings, deny the requested variance to Section 18.04.07.03.B1 of the Loveland Municipal Code, as amended on the record.***

## Variance Overview

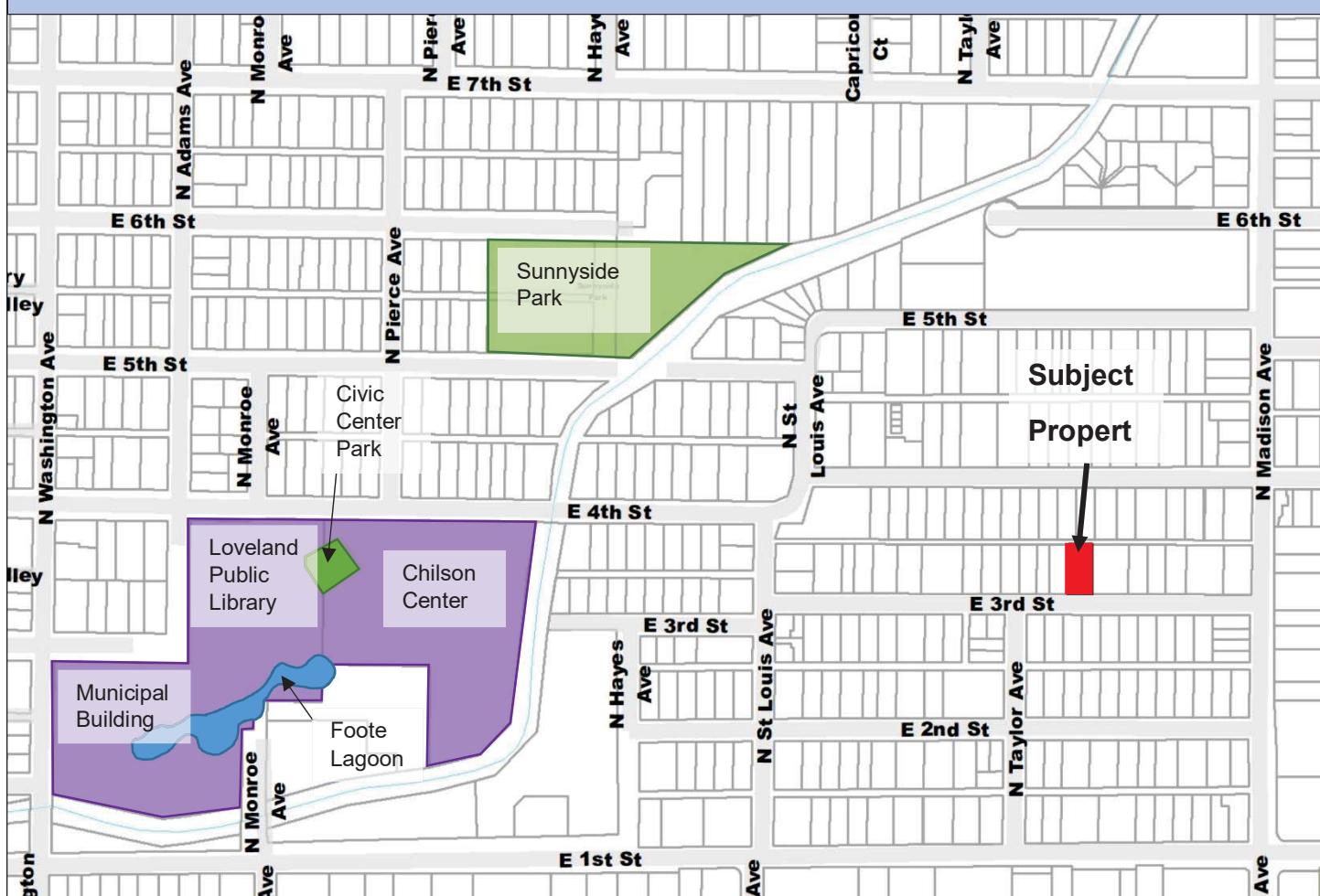
The applicant has constructed a 400 Square Foot Accessory Dwelling Unit (ADU) without a Building Permit in the rear of their property. The ADU is located approximately 3 feet to the rear property line and 2 feet to the side property line along the western side of the site.

The ADU was constructed in the same approximate location where an outbuilding was previously located. The Unified Development Code (UDC) requires that accessory structures, in this case the ADU, be setback 6 feet to the side property line and 15 feet to the rear property line.



Accessory Dwelling Unit - Picture provided by applicant

## VICINITY MAP



## Site Data

<b>Address/Location:</b>	1229 East 3 <sup>rd</sup> Street – North of E. 1 <sup>st</sup> Street, on the east side of the Chilson Recreation Center
<b>Subdivision:</b>	Kempton-Turney Addition
<b>Land Area:</b>	0.2 acres/8,619 square feet
<b>Existing Buildings:</b>	Principal dwelling unit, detached garage and a storage building
<b>Vehicular Access:</b>	E. 3 <sup>rd</sup> Street
<b>Water Provider:</b>	City of Loveland
<b>Wastewater Provider:</b>	City of Loveland
<b>Electric Provider:</b>	City of Loveland
<b>Gas Provider:</b>	Xcel Energy
<b>Floodplain:</b>	No

## Zoning and Existing Land Uses

	Existing Zoning	Existing Land Use
<b>Subject Property</b>	R3e-Established high density residential	Single family home
<b>Adjacent North</b>	R3e-Established high density residential	Single family homes
<b>Adjacent South</b>	R3e-Established high density residential	Single family homes
<b>Adjacent East</b>	R3e-Established high density residential	Single-family homes
<b>Adjacent West</b>	R3e-Established high density residential	Single family homes

## Report Attachments

1. Application and Justification Statement
2. Site Plan
3. Picture of the ADU
4. Previous outbuilding
5. Letter from adjacent neighbor

## Development Review Team Contacts

Current Planning:	Emily Tarantini
-------------------	-----------------

## PROJECT SUMMARY

The 1229 E. 3rd Street variance is a request to allow a recently constructed ADU to remain located within the NW corner of a residential lot. The ADU is 400 square feet in size measuring 20 feet by 20 feet and is 15 feet high. The ADU was constructed approximately 3 feet to the rear property line (adjacent to the alley) and approximately 2 feet to the side property line (adjacent to a residential neighbor). The ADU structure was constructed without a building permit.

The Kempton-Turney neighborhood was subdivided in 1905 and contains mostly single-family homes. The subject property and surrounding properties are zoned R3e-Established High Density Residential. This zoning allows for single family homes, duplexes and multi-family buildings. The majority of the residences within this neighborhood contain outbuildings that are generally located towards the rear of the property adjacent to the alley.

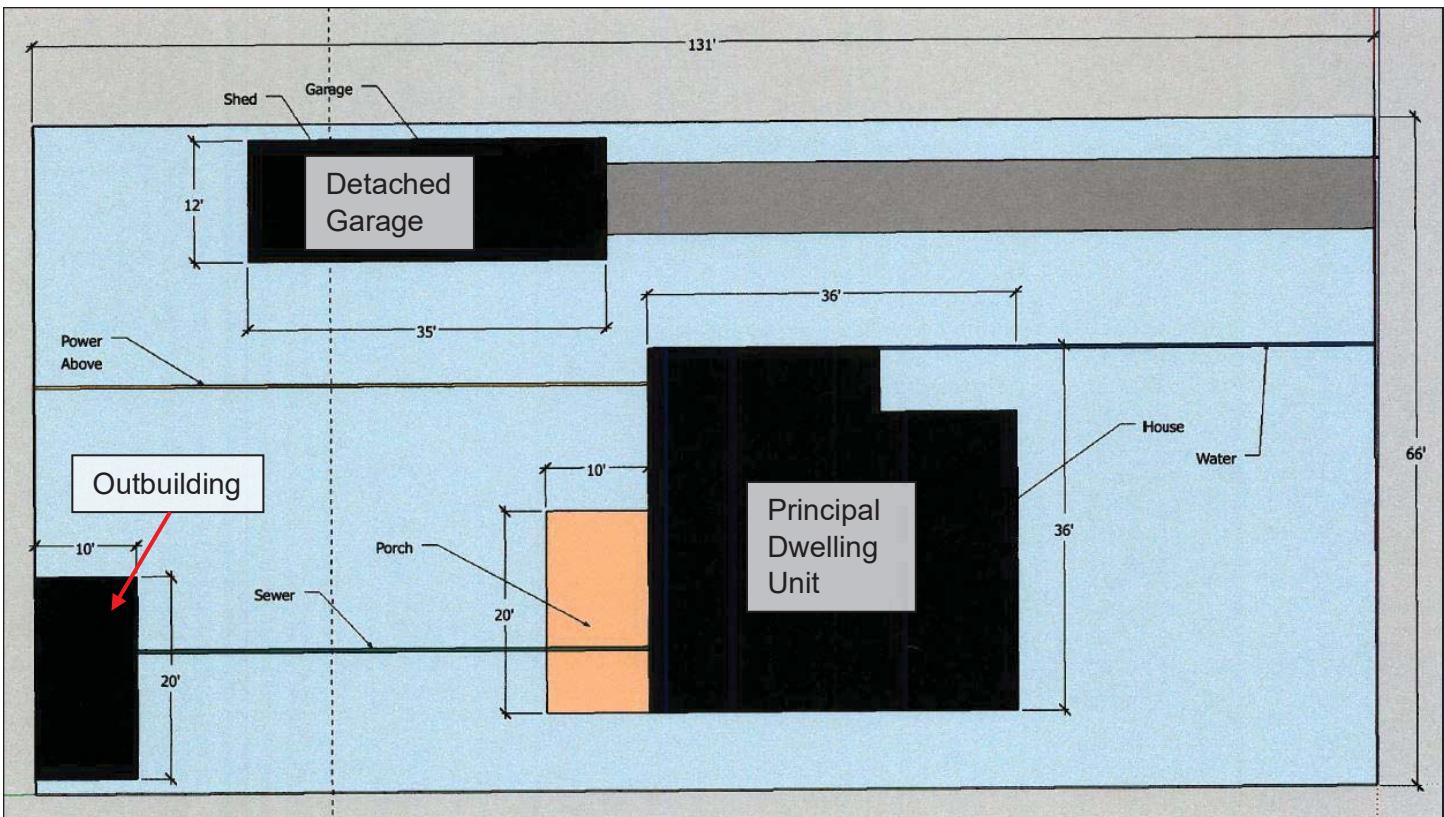
The applicant states that they were aware the ADU structure required a building permit. Their hesitation in submitting for a building permit stemmed from a previous negative experience with the City in trying to permit a Gym Facility within an industrial building. Because of this negative experience, they chose not to pursue a building permit for the ADU structure and avoid working with the City of Loveland again.

The applicant also explains that the ADU was constructed in the same general location where a 10 foot by 20-foot outbuilding was previously located and believed this location would be grandfathered. Although it is unknown when this outbuilding was constructed, County records show that the principal dwelling unit was constructed in 1902. The UDC lists criteria for alteration of nonconforming buildings to occur as long as there is no further violation of the UDC or building codes. Because the previous outbuilding has been demolished and a different use was constructed in its place, grandfathering cannot be considered for the following reasons:

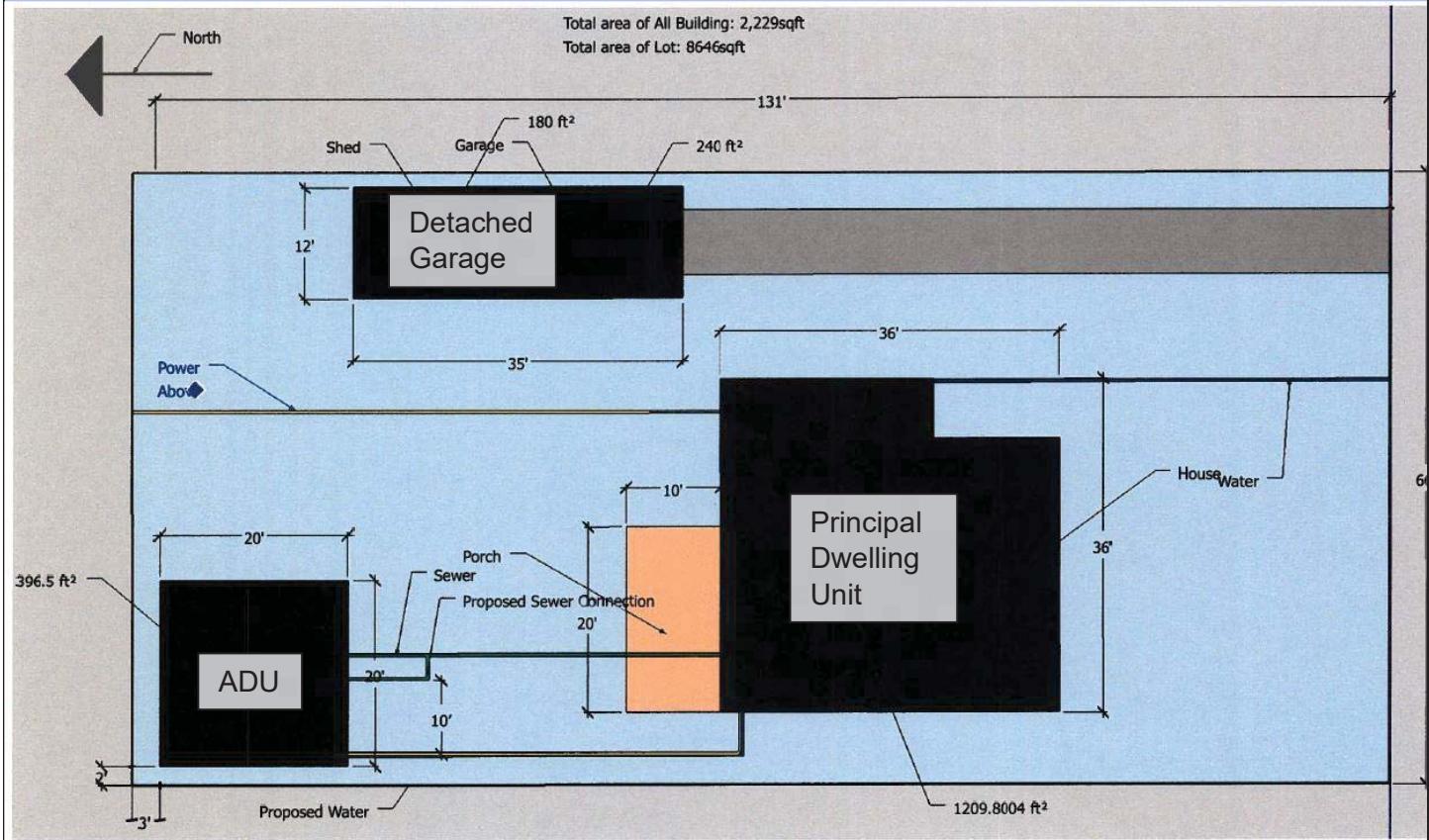
- The outbuilding was demolished. It was not altered or extended.
- A building that contains a different use was constructed in its place (non-habitable versus habitable).
- A habitable structure triggers different building code requirements related to fire rating and other factors.

If approved, the variance must include conditions requiring that a building permit be submitted to the City for the ADU and all City code provisions must be met, including fire rating measures along the northern and western sides of the structure.

## Site Plan showing previous outbuilding - Provided by applicant



## Site Plan showing existing ADU - Provided by applicant



Picture of the previous outbuilding - Provided by applicant



Constructed ADU - Provided by applicant



## PROJECT DETAILS

The Unified Development Code (UDC) specifies that accessory structures, including ADU's, are required to meet a 15-foot rear setback and a 6-foot side setback. It is important to mention that the setback requirements of accessory structures prior to the adoption of the UDC were 5 feet to the side and rear property lines. The 10-foot increase to the rear setback adopted with the UDC was a change that was not fully evaluated and has caused many challenges for property owners as it is considered a substantial setback for a small residential lot similar to this one.

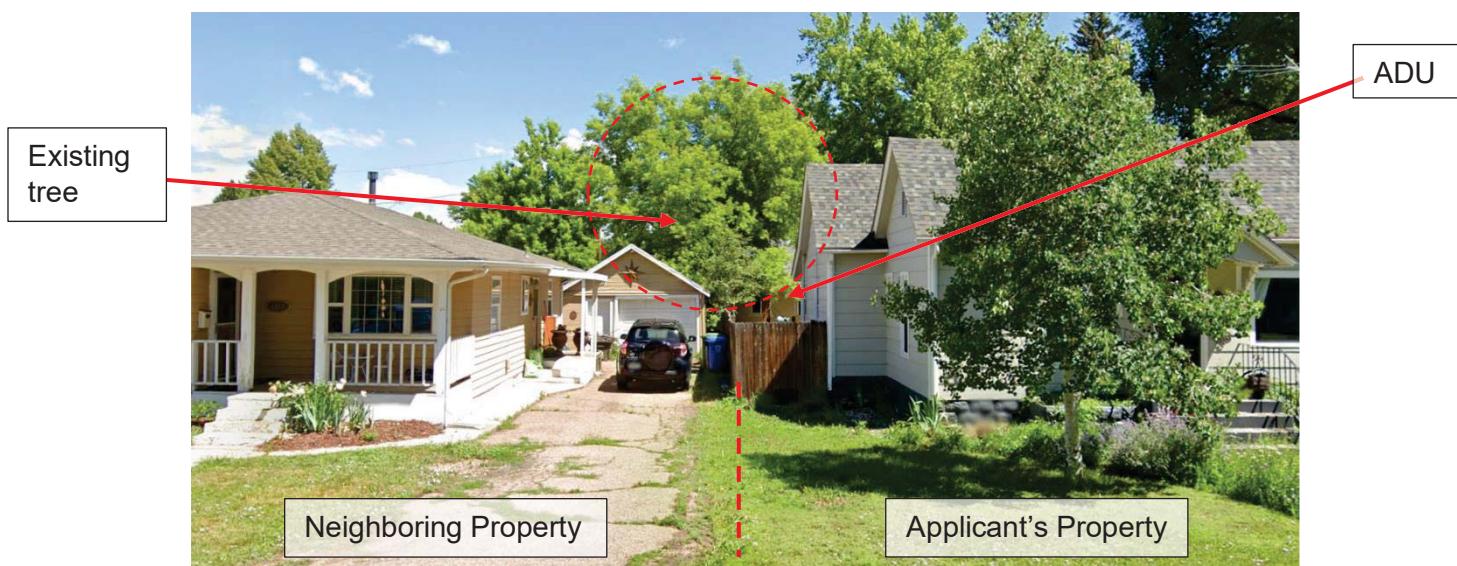
Planning staff conducted Study Sessions with the Planning Commission on April 3<sup>rd</sup> and 13th, 2020 that included proposed amendments to the accessory structure setbacks. The Planning Commission indicated support for the proposed setback adjustments. The proposed setback amendments, however, have yet to be adopted by City Council. Although the proposed changes to the setbacks (a minimum of 5 feet to the rear and side lot lines) represent a reduced requirement, the placement of the subject ADU would still require a variance as it sits less than 5 feet from the side and rear lot lines.

The applicant has provided a letter of non-objection from the resident to the west of the property as shown in **attachment 5**. Additionally, the applicant shared with staff that they have met with the majority of the neighbors and indicates that these neighbors have expressed full support of the variance and have no objections to the ADU. This support, however, is not documented.

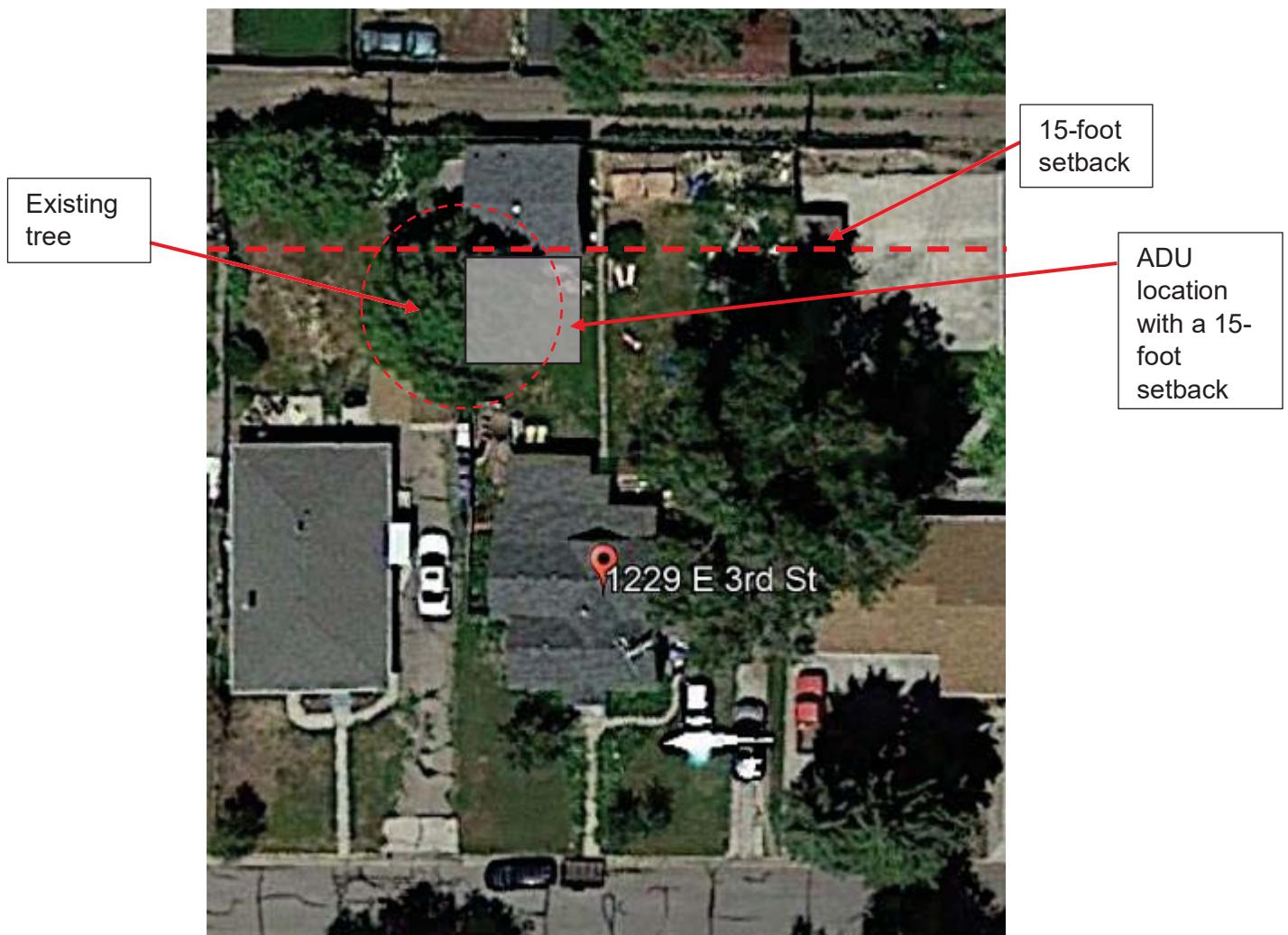
Planning staff believes that the applicant's explanation of having negative feelings of working with the City on a previous, unrelated project cannot constitute a hardship and does not justify moving forward with the construction of an ADU without a building permit. However, staff believes that a hardship does exist that is unique to this lot.

The image below, followed by the Google Earth aerial view, shows a mature and healthy tree that exists on the neighboring property to the west. A substantial portion of the tree canopy (approximately half) overhangs into the applicant's property. Constructing or relocating the ADU within the required 15-foot setback would essentially place the structure in the same location as the existing tree. As a result, a considerable amount of trimming would be required and would most likely be detrimental to the tree's health and lifespan. Removal of the tree can be considered an unreasonable request and expense for the applicant.

Street view of the property with existing tree



## Google earth aerial view of the property and ADU



### Neighborhood Outreach

<b>Notification:</b>	An affidavit was received from Emily Lum certifying that written notice was mailed to all property owners within 150 feet of the property and a notice was posted on the subject property facing E. 3rd Street. All notices identified that a virtual hearing for the variance will be held on April 27, 2020 at 4:30 pm with the Zoning Board of Adjustment Hearing Officer.
<b>Neighborhood Response:</b>	At the time this report was prepared, Planning staff had not received any communications from the neighbors. The applicant shared with staff that they have met with the majority of the neighbors who are in support of the variance and have no objection to the ADU.

## **Zoning Board of Adjustment Criteria and Findings for Approval**

Pursuant to Section 18.17.15.07.B. of the City of Loveland Municipal Code, the Zoning Board of Adjustment shall consider and make findings regarding the following criteria for variance requests. All criteria must be met in order to approve the requested variance.

### **Criteria**

- 1. Granting the variance will not substantially conflict with any adopted plans or policies of the City, or the purposes or intent set out in this Code;**

**Finding: Staff believes that this finding CAN be met**

**Analysis:** The requested variance does not conflict with any adopted plans or policies of the City other than the setback regulations. The requirement for fire rating measures and related requirements can be applied during the review of the building permit if the variance is approved.

- 2. There are exceptional conditions creating an undue hardship, applicable only to the property involved, or the intended use thereof, which do not generally apply to the other land areas or uses within the same zone;**

**Finding: Staff believes that this finding CAN be met**

**Analysis:** The existing, healthy and mature tree that encumbers this lot creates a hardship that is unique to this site. Constructing or relocating the ADU within the required 15-foot setback would essentially place the structure in conflict with the existing tree, requiring a level of trimming that would be detrimental to the tree's health.

- 3. The Applicant cannot derive a reasonable use of the property without approval of a variance;**

**Finding: Staff believes that this finding CAN be met**

**Analysis:** As a small lot that is encumbered by a mature tree, denial of the variance would disallow the functional use of the backyard of the subject property and prevent the establishment of an ADU structure.

- 4. Granting the variance will not generally set a precedent for other applications (which would indicate that a text amendment to this UDC should be proposed and considered instead);**

**Finding: Staff believes that this finding CAN be met**

**Analysis:** A precedent will not be set by granting this variance as the location of this ADU and the existing tree are particular to this lot.

- 5. Granting the variance will not be detrimental to any adjacent properties or the area;**

**Finding: Staff believes that this finding CAN be met**

**Analysis:** Based on evidence that the applicant has provided to staff, the adjoining affected property owner to the west is not objecting to the proximity of the ADU and has provided a letter of non-objection as seen in attachment 5.

- 6. Granting the variance will not be detrimental to public health, safety, or welfare; and**

**Finding: Staff believes that this finding CAN be met**

**Analysis:** There is no evidence that the public health, safety, or welfare would be impacted by the requested variance. The appropriate fire rating for the building can be achieved through the building permit process.

7. Adequate relief cannot be reasonably obtained through a different procedure, such as the application of alternative compliance standards, if applicable.

*Finding: Staff believes that this finding CAN be met*

*Analysis: There are no alternative City procedures that the applicant could pursue to allow for the ADU to remain in its current location.*

### **Alternative Findings: Zoning Board of Adjustment Criteria and Findings for Denial**

Pursuant to Section 18.17.15.07.B. of the City of Loveland Municipal Code, the Zoning Board of Adjustment shall consider and make findings regarding the following criteria for variance requests. All criteria must be met in order to approve the requested variance.

#### **Criteria**

1. **Granting the variance will not substantially conflict with any adopted plans or policies of the City, or the purposes or intent set out in this Code;**

*Finding: Staff believes that this finding CAN be met*

*Analysis: The requested variance does not conflict with any adopted plans or policies of the City other than the setback regulations. The requirement for fire rating measures can be applied during the review of the building permit, if the variance is approved.*

2. **There are exceptional conditions creating an undue hardship, applicable only to the property involved, or the intended use thereof, which do not generally apply to the other land areas or uses within the same zone;**

*Finding: Staff believes that this finding CANNOT be met*

*Analysis: The applicant's negative feelings of working with the City of Loveland on a previous, unrelated project does not constitute a hardship nor does it justify moving forward with the construction of an ADU without a building permit.*

*The 15-foot rear setback requirement does not prevent the ADU from being located in a different area of the lot. Furthermore, the proposed setback amendments for accessory structures (as described in this staff report) would not change the need for a variance in this case.*

3. **The Applicant cannot derive a reasonable use of the property without approval of a variance;**

*Finding: Staff believes that this finding CANNOT be met*

*Analysis: Denial of the variance does not preclude reasonable use of the property; furthermore, the ADU, if desired, can be located elsewhere on the property without requiring a variance.*

4. Granting the variance will not generally set a precedent for other applications (which would indicate that a text amendment to this UDC should be proposed and considered instead);

**Finding:** *Staff believes that this finding CAN be met*

*Analysis: A precedent will not be set by granting this variance as the location of this ADU is particular to this lot.*

5. Granting the variance will not be detrimental to any adjacent properties or the area;

**Finding:** *Staff believes that this finding CAN be met*

*Analysis: Based on evidence that the applicant has provided to staff, the adjoining affected property owner to the west is not objecting to the proximity of the ADU.*

*In addition, the Building Division staff believes that the appropriate fire rating measures can be achieved for the ADU in its current location.*

6. Granting the variance will not be detrimental to public health, safety, or welfare; and

**Finding:** *Staff believes that this finding CAN be met*

*Analysis: There is no evidence that the public health, safety, or welfare would be impacted by the requested variance. The appropriate fire rating for the building can be achieved through the building permit process.*

7. Adequate relief cannot be reasonably obtained through a different procedure, such as the application of alternative compliance standards, if applicable.

**Finding:** *Staff believes that this finding CAN be met*

*Analysis: There are no alternative City procedures that the applicant could pursue to allow for the ADU to remain in its current location.*

### Staff Recommendation

City staff is recommending approval of the variance application based on the recommended findings for approval.

Should the Hearing Officer agree with staff findings, the following condition of approval is recommended by Staff:

Recommended Condition:

1. Prior to further construction on the ADU, or occupancy of the ADU, a Building Permit shall be submitted to the Building Division. The ADU structure cannot be occupied until a certificate of occupancy has been issued.

However, should the Hearing Officer disagree with staff findings and determine that a denial of the variance is appropriate, alternative findings for denial have been provided beginning on page 9 of this report.

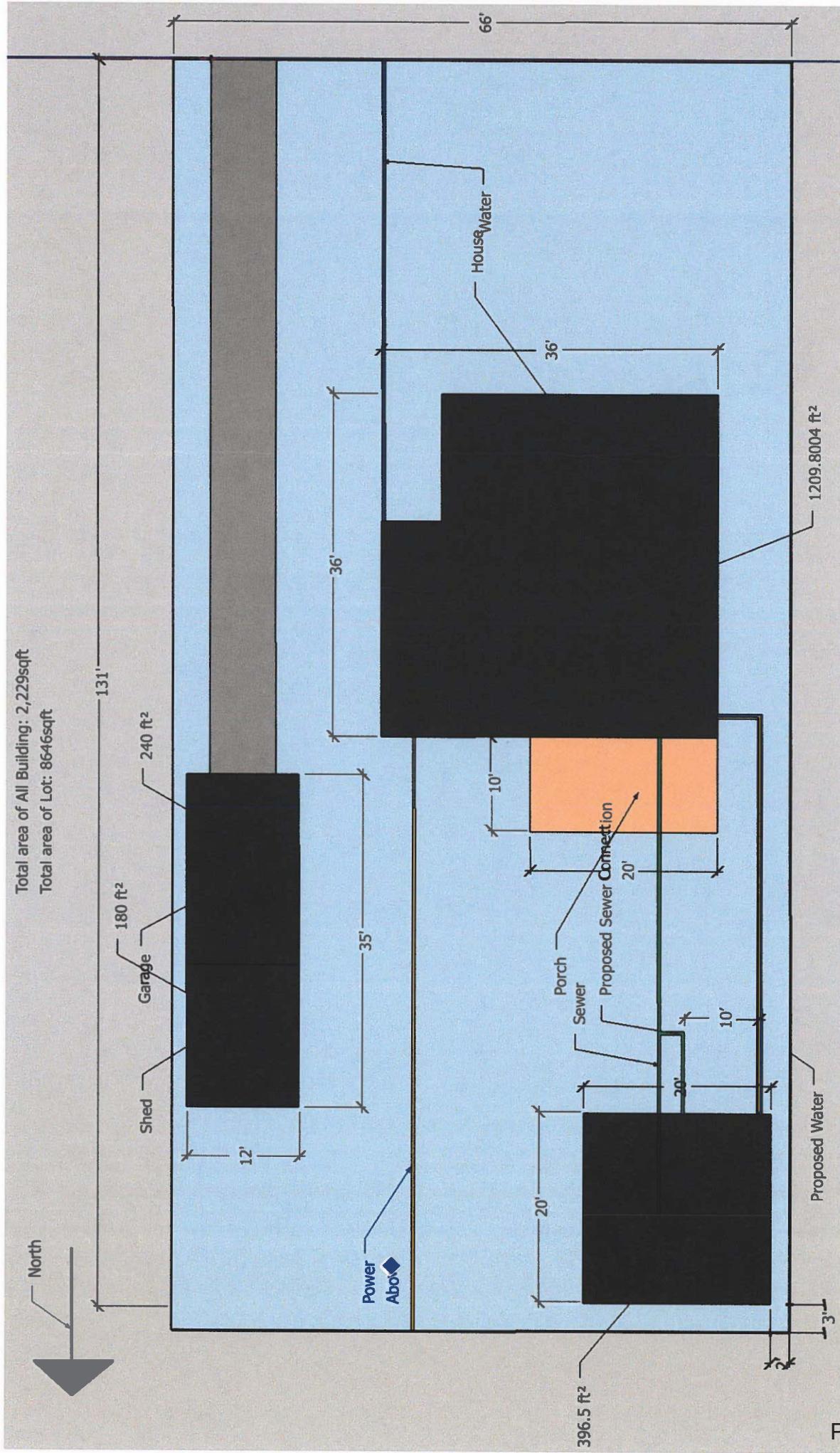
# Variance APPLICATION

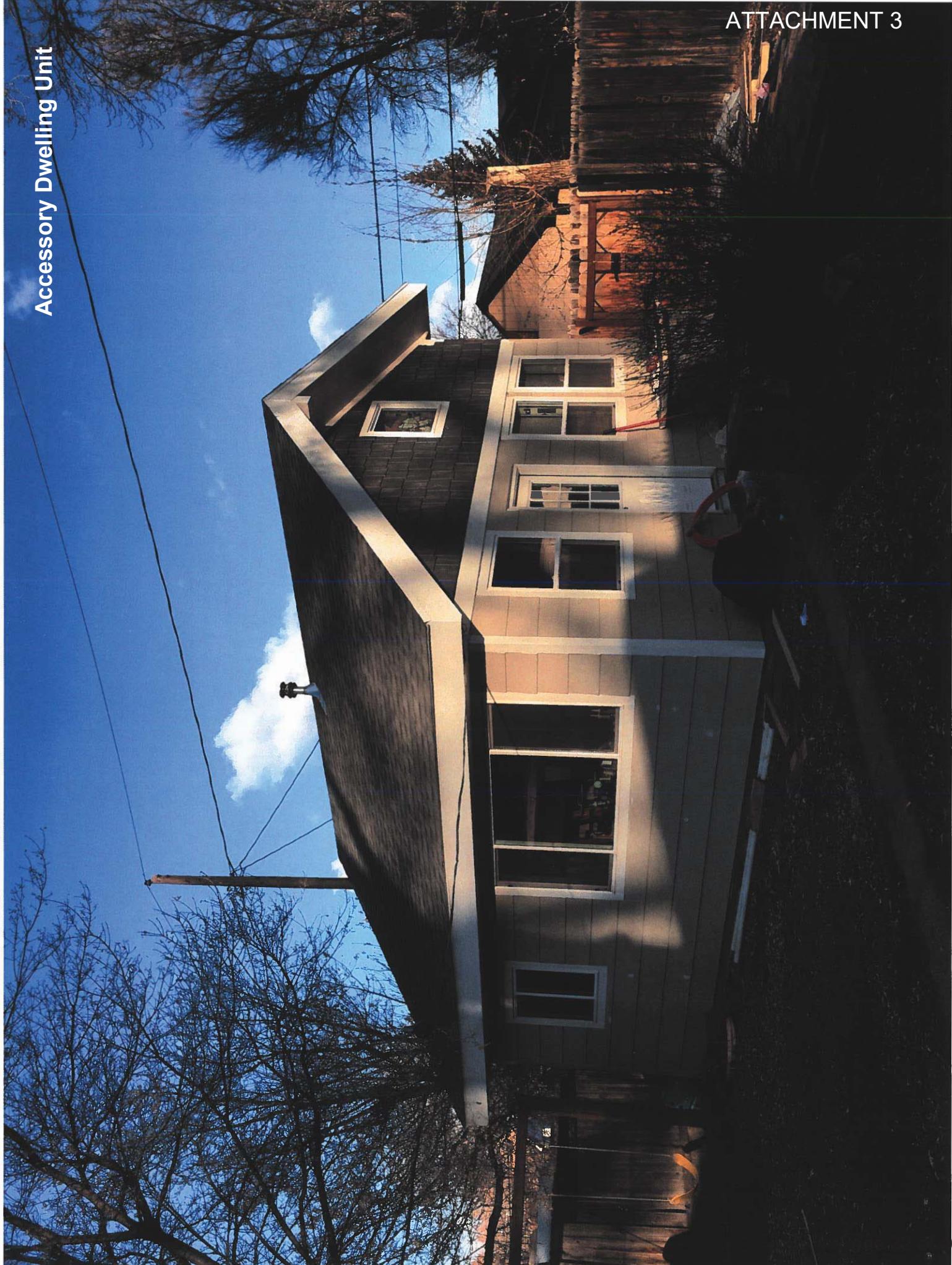
Applicant Information		
Name: <b>Adam &amp; Emily Lum</b>	Phone: <b>(740) 925-5184</b>	
Address: <b>1229 E 32 St.</b>		
City, State: <b>Loveland, CO</b>	Zip Code: <b>80537</b>	
Email Address: <b>emily.h.lum@gmail.com</b>	Preferred Method of Contact	<input checked="" type="checkbox"/> Phone <input type="checkbox"/> Email
Variance Request		
Address of Property in which the Variance is Requested (if different than above information):   		
Describe the requested variance.	Requesting a variance for edge of building already built. Rear of current building is ~3' from rear property line (based on electrical lines) and ~2' from Western property line.	
List all existing structures on the property.	<b>Main home</b> <b>Garage (detached)</b> <b>Outbuilding attached to garage</b> <b>In progress building</b>	
Applicant's Signature		
By signing this application, I hereby acknowledge that the information provided is correct and complete.		
Signature		
Printed Name	<b>Emily H. Lum</b>	
Date	<b>3/26/2020</b>	

# Findings Report

For each finding below, please provide a detailed justification on how the variance request complies with the finding.

Finding	Justification
1. Granting the variance will not substantially conflict with any adopted plans or policies of the City, or the purposes or intent set out in the Unified Development Code.	This subdivision (Kempton-Turney) was established in 1905. The main house on the property was built in 1902. The location of the ADU that has been built lies over the location of a previous structure on the property. It does not extend any further into the alley or adjacent property. It will have no effect on the adopted plans and policies of the city.
2. There are exceptional conditions creating an undue hardship, that are specific only to the property involved or the intended use, which do not generally apply to the other properties or uses within the same zone.	Because of the emotional and trying times while attempting to permit a building leased for our co-owned business, and the \$40K lost during that process, we were extremely hesitant to permit this structure. We have invested a lot of time and effort and money into this property making it safe and aesthetically pleasing. It would be personally difficult for us to have to tear down the building, and would result in a loss of \$20K.
3. The Applicant cannot derive a reasonable use of the property without approval of the request variance.	If we attempted to remove the current building or respect the 15' setbacks, our entire backyard would be rendered useless. The best use of this property at this point is this lonely ADU.
4. Granting the variance will not set a precedent for other applications.	We have absolutely learned our lesson in requesting permits. We also recognize now that the city is willing to work with us instead of against us.
5. Granting the variance will not be detrimental to any adjacent properties or the area.	The current building is far more attractive and safe than the previous building. We believe it is an improvement to the alley and the whole neighborhood. We are including a letter signed by our direct neighbors that agrees with this sentiment.
6. Granting the variance will not be detrimental to public health, safety, or welfare.	If anything, the current building is doing exactly opposite. We plan to fully comply with City fire + electrical, + general building code, making this structure much safer than the previous one and in general one of the safest and nicest looking on the block.





View from alley

ADU







1/20/2020

Dear Neighbors at 1213 E. 3<sup>rd</sup> St.

In regards to the structure at the rear of the property of 1229 E. 3<sup>rd</sup> St., and bordering your own property, do you have any problem with the western wall of the structure being the division between the two properties? The fence along the rest of the property line will be replaced summer of 2020.

x yes, problem

x no, no problem

signature(s)

Casey Fausinger-Pierce

Thank you!

<b>VARIANCE REQUEST</b>	
<p>Reduction of the rear and side setbacks to allow for an already constructed Accessory Dwelling Unit (ADU) to remain in place.</p>	
<b>REQUIRED SETBACK</b>	<b>PROPOSED SETBACK</b>
<ul style="list-style-type: none"> <li>• 15 Feet to the rear property line (Alley side)</li> <li>• 6 Feet to the side property line (Neighbor)</li> </ul>	<ul style="list-style-type: none"> <li>3 Feet</li> <li>2 Feet</li> </ul>

<b>ZONING BOARD OF ADJUSTMENT</b>	
 <p><b>City of Loveland</b></p>	<p><b>VARIANCE REQUEST FOR A REDUCED SETBACK</b></p> <p><b>1229 E. 3RD STREET</b></p>
	<p><b>EMILY TARANTINI</b></p> <p><b>CURRENT PLANNING</b></p>

## Vicinity Map



### LOCATION

**1229 EAST 3RD STREET**

# ADU OVERVIEW

## THE ACCESSORY DWELLING UNIT (ADU)

- The ADU was constructed without a permit.
- The ADU is 400 SF in size. Measuring 20 Feet x 20 Feet x 15 Feet high.
- Constructed in the approximate area of a previously existing outbuilding.
- Located 3 Feet from the rear property line and 2 Feet to the side property line.

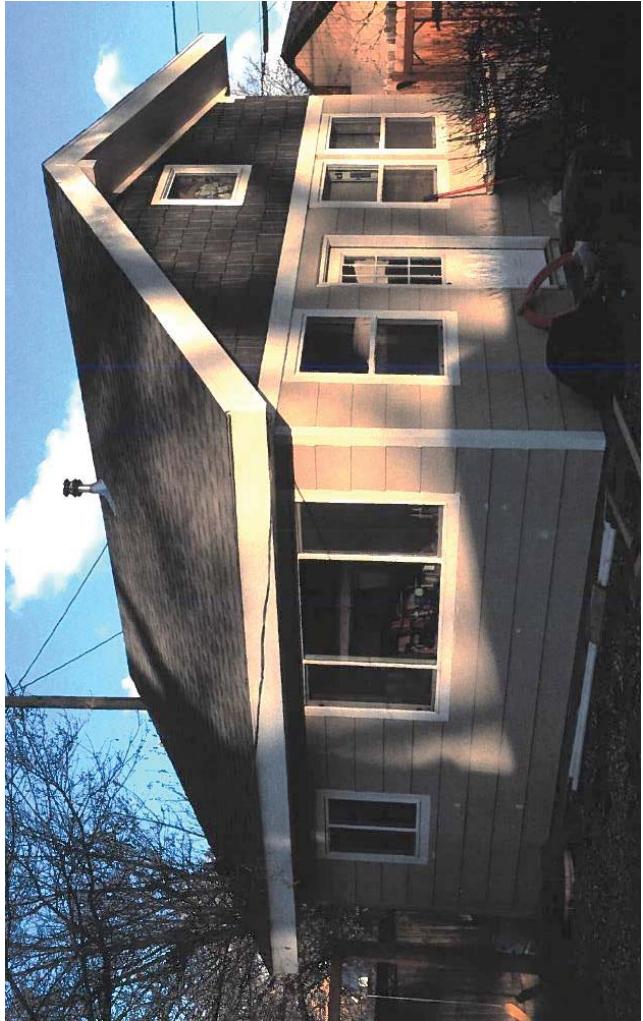
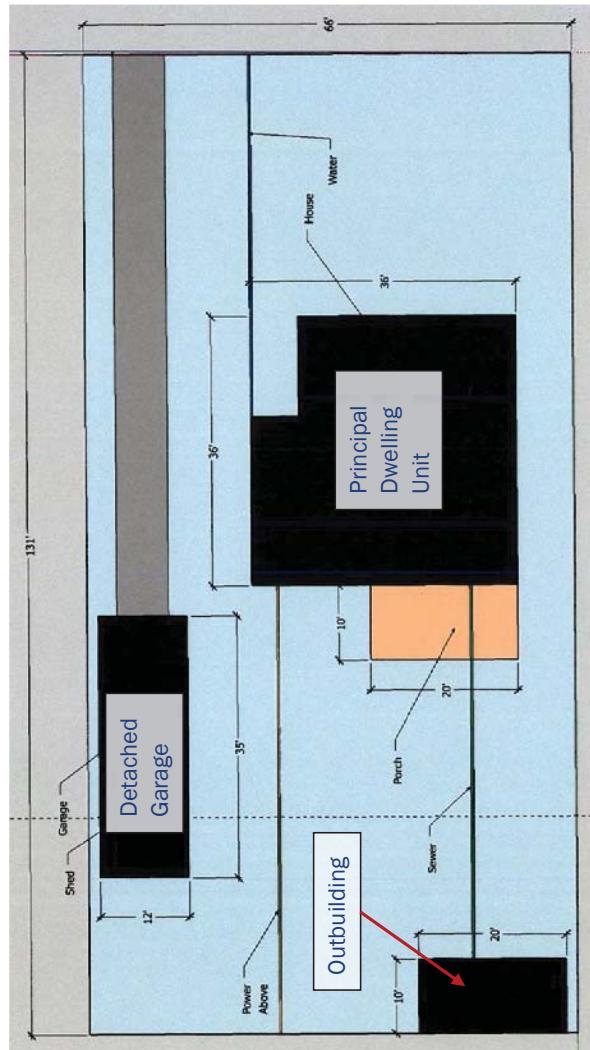


Image provided by applicant

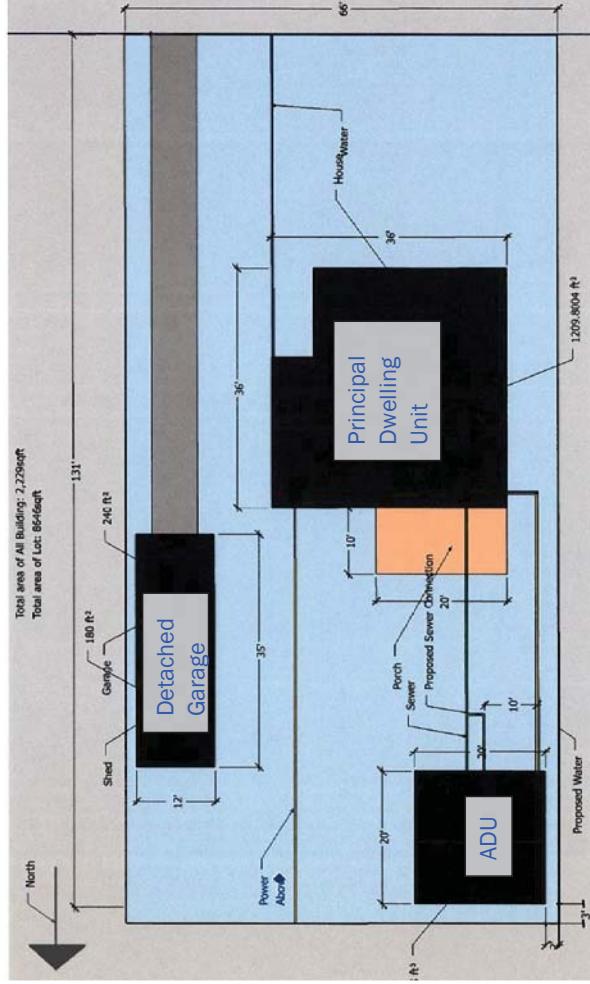
## SITE PLAN - Before & After

1229 E. 3RD STREET

## Before



After (Existing conditions)



Site plans provided by the applicant

## PREVIOUS OUTBUILDING

1229 E. 3RD STREET

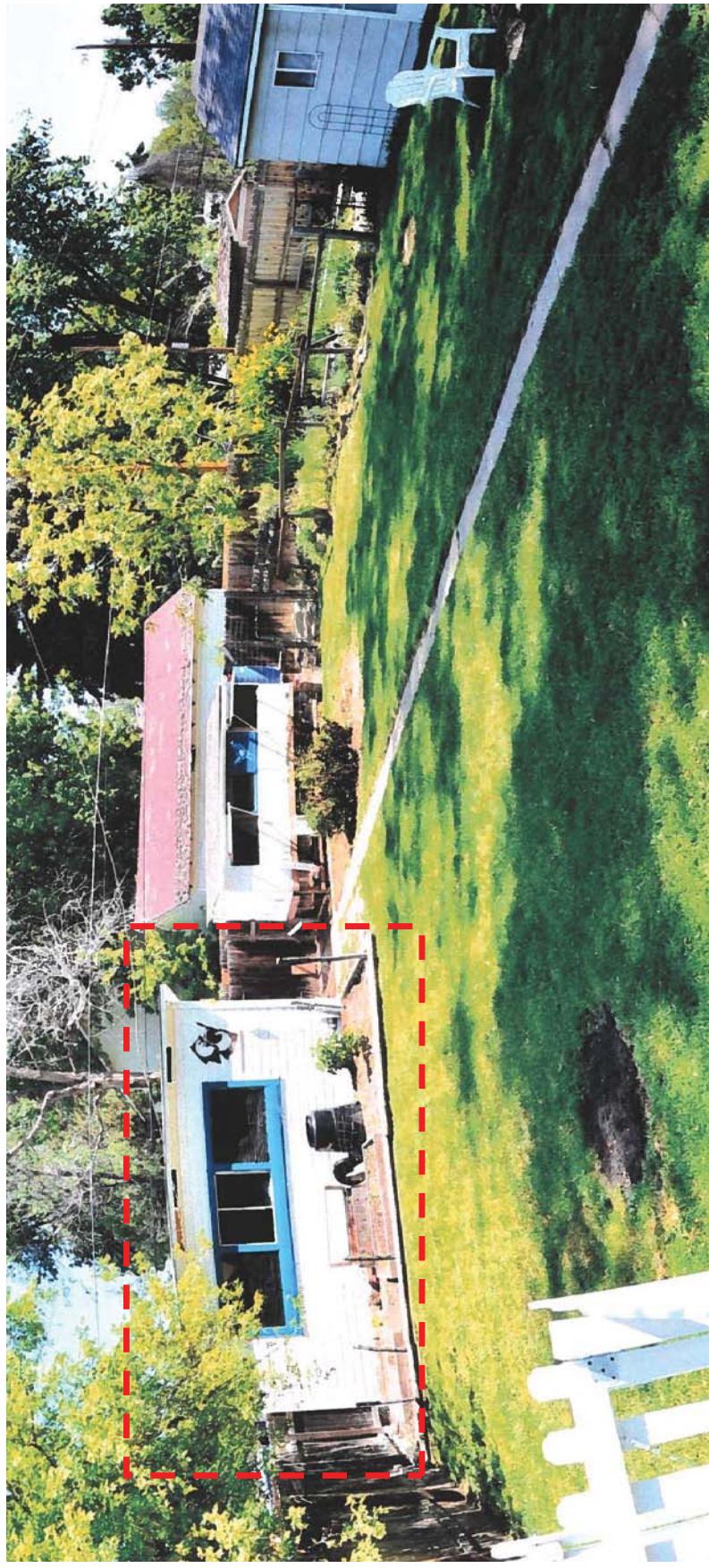
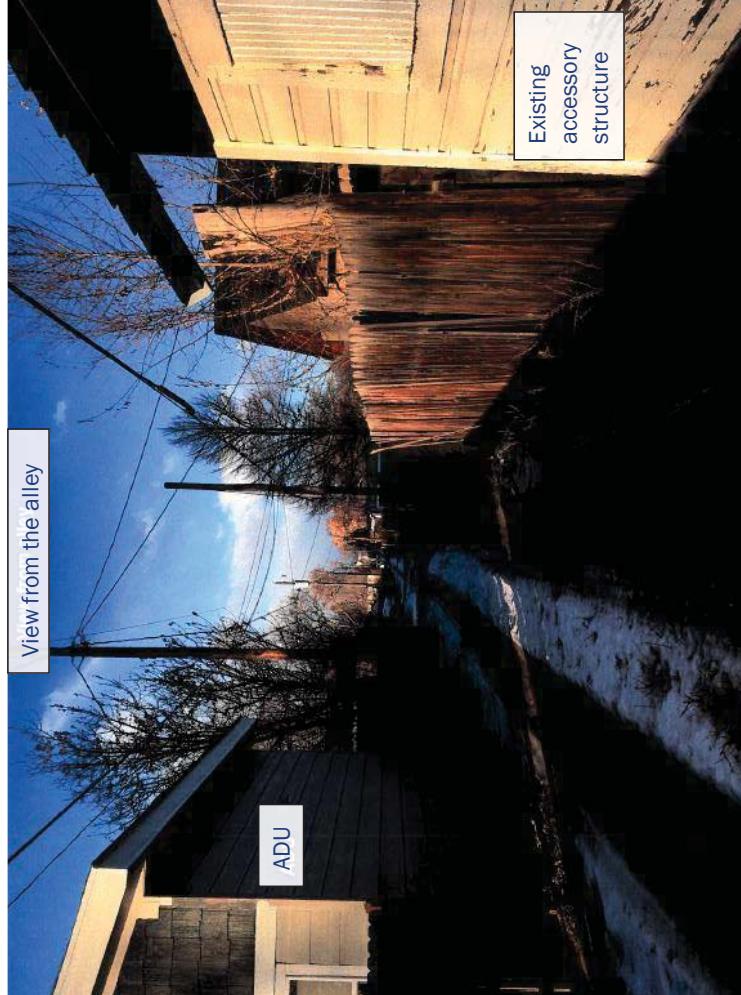


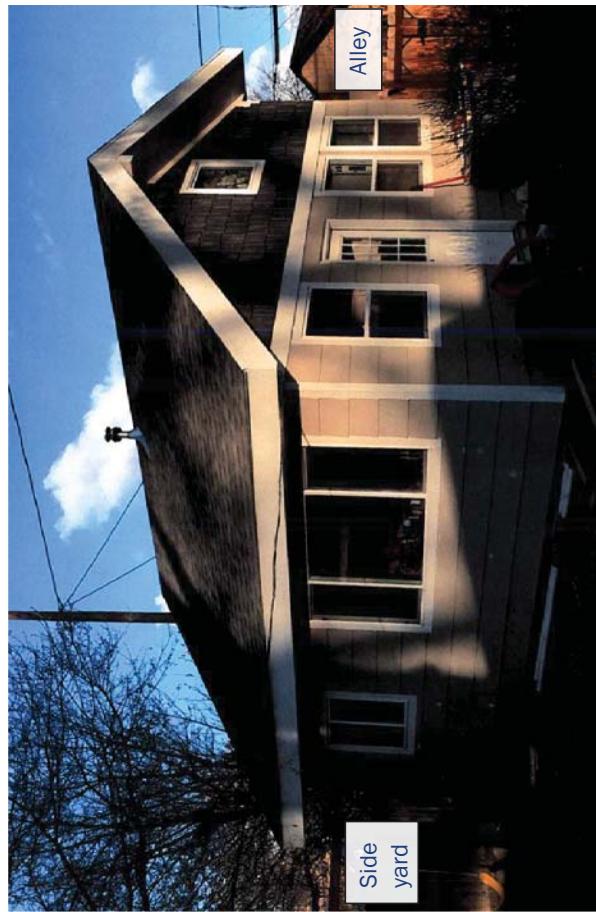
Image provided by the applicant

# CONSTRUCTED ADU

1229 E. 3RD STREET



6



Images provided by the applicant

## VARIANCE DETAILS & Hardship

1229 E. 3<sup>RD</sup> STREET



Approximate location of the 15-foot setback

Existing mature tree

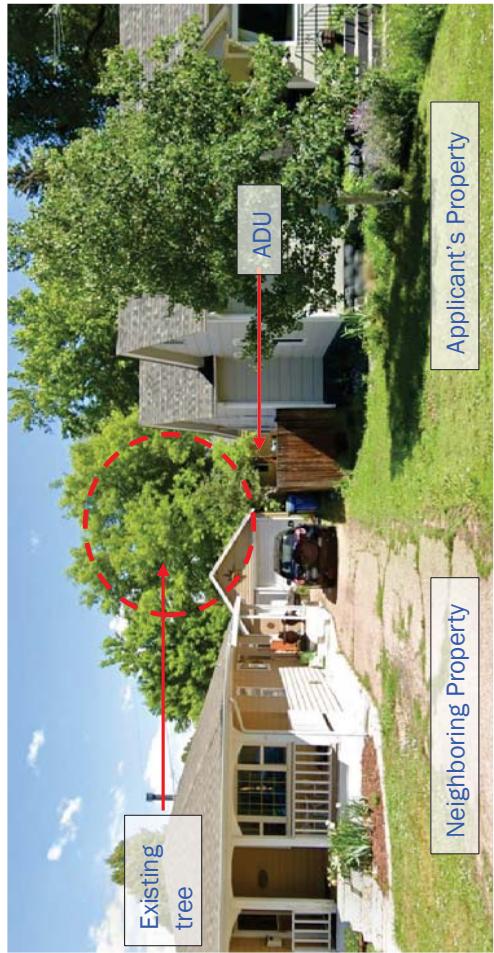
## ADU SETBACKS

Required: 15 Feet  
Existing: 3 Feet

Required: 6 Feet  
Existing: 2 Feet

Side (Neighbor)

Street view provided by staff

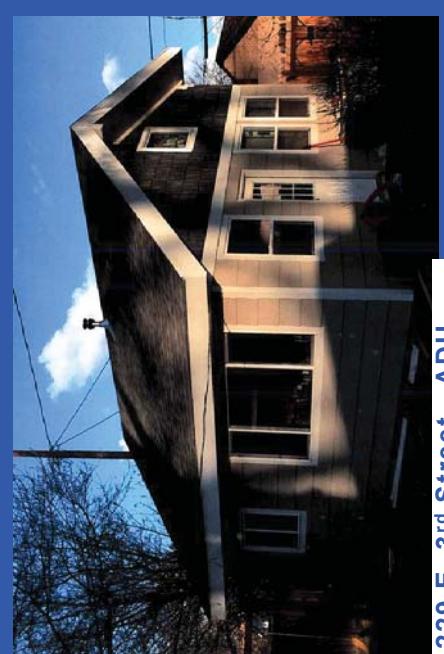


Conceptual site plan provided by staff

## 7 FINDINGS THAT MUST BE MET TO RECOMMEND APPROVAL

---

- 1) Granting the variance will not substantially conflict with any adopted plans or policies of the City, or the purposes or intent set out in this Code. - ***Has been met***
- 2) There are exceptional conditions creating an undue hardship, applicable only to the property involved, or the intended use thereof, which do not generally apply to the other land areas or uses within the same zone. - ***Has been met***
- 3) The Applicant cannot derive a reasonable use of the property without approval of a variance. - ***Has been met***
- 4) Granting the variance will not generally set a precedent for other applications (which would indicate that a text amendment to this UDC should be proposed and considered instead). - ***Has been met***
- 5) Granting the variance will not be detrimental to any adjacent properties or the area. -***Has been met***
- 6) Granting the variance will not be detrimental to public health, safety, or welfare. -***Has been met***
- 7) Adequate relief cannot be reasonably obtained through a different procedure, such as the application of alternative compliance standards.- ***Has been met***



# ZBA

---

# CRITERIA & FINDINGS



**ON THE BASIS THAT ALL FINDINGS HAVE BEEN MET, STAFF IS  
RECOMMENDING APPROVAL WITH THE FOLLOWING CONDITION:**

**RECOMMENDED CONDITION:**

1. Prior to further construction on the ADU, or occupancy of the ADU, a building permit shall be submitted to the building division. The ADU structure cannot be occupied until a certificate of occupancy has been issued.

—

**STAFF**

**RECOMMENDATION  
& CONDITION**



**1229 E. 3rd Street -ADU**