

Dear Board Members,

I am submitting this request for a variance to the side property setback for retaining walls. A previous owner built the retaining wall and then added on an extension to the house by closing in the carport – leaving the retaining wall less than 9 inches from the house. This wall is currently failing and is heavily leaning towards our home. The first concern with this failing wall is that when it falls, it will push 1,000s of pounds of cinder block and dirt against our house, causing damage. Another issue is that water collects between the wall and the house, and because we are unable to grade the land away from the foundation, water accumulates beneath our foundation and has already led to continuous leaks in our basement. Our plan is to remove the retaining wall and rebuild a new one just on our side of the property line, which is around 4-5 feet away from our house and foundation. This will protect the home if the wall were to fall and will allow the space to grade the land to redirect water away from the foundation. Therefore, we are requesting a variance to reduce the side setback for retaining walls from 3.75 feet to 0 feet. In response to the City of Brookhaven “Review and Approval Criteria”, I offer the following:

**1. “The grant of the variance will not be detrimental to the public health, safety or welfare or injurious to property or improvements”**

Our plan is to replace the current failing retaining wall with a new, sturdy wall and will be less than two feet tall. I believe this wall will greatly improve safety, so I do not see this as a detriment to public, health, safety or welfare.

**2. “The variance request is based on conditions that are: (a) Unique to the subject property; (b) Not generally applicable to the other properties in the same zoning district; (c) Not the result of the subject property owner’s or applicants actions;”.**

This is a unique situation as our house is already 2.5 feet past the side setback limit, only allowing 5 feet to the property line. On top of that, the street we are located on slopes down to a creek, so the houses are almost tiered, which means we have to have a retaining wall on the side yard – it would be impossible to naturally grade the dirt without pushing even more water under our foundation. In our situation, it is not possible to safely build a wall with the current setback regulations.

We have only owned this house for just over a year and have not contributed to any of the problems we are facing.

**3. “Because of the particular conditions, shape, size, orientation or topographic conditions, the strict application of the requirements of this zoning ordinance would deprive the property owner of rights and privileges enjoyed by other similarly situated property owners.”**

If we are unable to move the retaining wall to the property line, we will be unable to properly grade the land away from our foundation. That means we will have to continue to deal with leaks in our basement and will be unable to finish the basement without fear of leaks causing rot and mold.

**4. “The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other similarly situated properties.”**

We are asking for the minimum necessary to have a functional design with the current limitations of the layout of our home and the sloping nature of the land.

**5. “The literal interpretation and strict application of the applicable provisions or requirements of this zoning ordinance would cause undue hardship or practical difficulty, as distinguished from a mere inconvenience.”**

If required to maintain a 3.75 foot setback for retaining walls, then we would have to tear down and rebuild a new retaining wall with less than 9 inches to work with in front of the wall. This will lead to higher costs and doesn't solve the problem of trapping water between the wall and therefore under our foundation. I do consider this a hardship and unwarranted.

**6. “The requested variance would be consistent with the spirit and purpose of this zoning ordinance and the comprehensive plan.”**

I feel this request is well within the spirit of this zoning ordinance because I believe the rules are in place first and foremost to keep homeowners safe. We are trying to rebuild this wall further from the house to avoid the wall falling on our home and water from continually pooling under our foundation. We also have the full support of our neighbor who shares the property border with us, and therefore, I believe the request is well within the spirit and purpose of the ordinance.

Thank you for your thoughtful consideration of our request. Please feel free to contact me if you have any additional questions.

Sincerely,

Greg Rose