

4.09.040 Special Exception for Setback Modification

A. General

Applications for a Special Exception for a setback modification shall be subject to the provisions of this Section and to the procedures set forth in Section 3.15. Prior to the Board's consideration of an application for a Special Exception under this Section, published, posted, and written notice shall be given to those property owners within 200 feet of the subject property and to those owners within the subject block. Any comments received will be considered in the Board's determination to grant a Special Exception to allow a setback modification.

B. Review Criteria

The Zoning Board of Adjustment (Board) shall base a decision to allow setback modification on review of the factors included in this Section and the site's specific circumstances. The Board shall consider the following criteria and standards in determining whether to grant a Special Exception for a setback modification(s):

1. If the proposed setback modification is solely a matter of convenience, no Special Exception shall be granted.
2. If there is adequate room on the site to allow the proposed addition or new structure without obtaining a Special Exception, no Special Exception shall be granted.
3. The fact that a property may be utilized more profitably if a Special Exception is granted shall not be considered a sufficient basis for granting a Special Exception.
4. Whether, if the Special Exception is granted:
 - a. The proposed setback modification is compatible and in context within the block in which the subject property is located.
 - b. The existing building envelope, including the main structure and any accessory structures, occupied the site in the past 1 year.
 - c. The existing structure is being replaced with new construction that meets the same dimensions and standards within the same footprint as the existing structure.
 - d. The proposed new structure will be less than 125% of the size of the structure it is replacing.
 - e. The proposed addition will be less than 25% of the size of the existing structure to which it is being added.
 - f. The proposed addition or new structure will be set closer to the street than any unit within the block.
 - g. The proposed addition or new structure will be less than 125% of the average size of other similar structures within the same block that are located within the setback.
 - h. The proposed addition or new structure would negatively impact adjoining properties by hampering their ability to develop within the required setbacks or maintain existing and future buildings.
 - i. There is adequate space for future and long-term maintenance of the proposed addition or new structure and any adjoining structures.

- j. The maintenance or location of fences or other structures are negatively impacted.
 - k. Existing large trees or significant features of the lot are preserved.
- 5.** The presence of other structures in the block with reduced setbacks does not automatically entitle another property to have the same reduced setbacks. All applications shall be considered in detail on a case-by-case basis.