PLANNING AND DEVELOPMENT DEPARTMENT
STAFF REPORT

Meeting Date: September 12, 2019
Item #: PZ2019-519

VARIANCE – 1854 8th Street

Request: Variance to allow a deck to encroach into the minimum required rear yard setback
Site Address: 1854 8th Street
Parcel Number: 18-271-11-006
Applicant and Owner: Kevin Price
Proposed Development: Construction of an elevated deck in the rear yard
Current Zoning: Neighborhood Residential 1 (NR-1) – This district is primarily intended for single-family residences and related accessory uses.

Staff Recommendation: DENIAL
Applicable UDO Standards:

<table>
<thead>
<tr>
<th>Rear Yard Setback for Unenclosed Deck</th>
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<td>Required (min.)</td>
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Current Use: Single-Family Residence

Surrounding Land Uses: North, East, and West – NR-1: Single-Family Residence
South – City of Brookhaven

Site Description:
The subject property is a 0.24-acre lot. The previous house was demolished and a new two-story 2,470 square foot, single-family residence was recently completed. A stream runs through the front yard of the property.

Site History:
In May 2018, the applicant received an Administrative Variance (PZ2018-295) to reduce the required rear yard setback from 25 to 20.4 feet. In August 2018, an additional Administrative Variance (PZ2018-316) was approved to increase the contextual front-yard setback from 96.1 to 98.4 feet. There is a stream that runs through the front of the property, limiting the amount of buildable area on the lot. The administrative variances allowed the applicant to build without encroaching into the 75-foot stream buffer in the front yard. The approved plans for the new house’s building permit showed a concrete patio encroaching 12 feet into the approved 20.4-foot rear yard setback. However, the applicant built an unpermitted elevated wooden deck in place of the concrete patio that was discovered during the zoning final inspection.

Description of Proposed Project:
The applicant has built a 12-foot x 24-foot elevated wooden deck in the rear yard, 8.4 feet from the rear property line. The deck overlooks the adjoining properties rear yards because of the grade of the property and height of the deck. An administrative variance was granted to reduce the rear yard setback to 20.4 feet and an at-grade concrete patio was approved in the building permit to construct a new single-family residence. Without a variance, an unenclosed deck is permitted to be 15 feet from the property line in the NR-1 zoning district. While setback requirements do not apply to at-grade patios, elevated decks may only encroach 10 feet into a rear yard setback.

Applicant’s Request:
The applicant requests one VARIANCE from the following regulations of the UDO, to allow a deck to encroach into the minimum required rear yard setback:
1. Section 230-4(a)(2) to increase the allowable encroachment of an unenclosed deck into the required rear yard setback from 10 feet to 16.6 feet.

Staff Analysis:
The UDO in Section 280-32(a), provides the following factors for granting a variance from the contextual front yard setback requirements. The analysis of these factors is included below:
a. There are extraordinary and exceptional conditions pertaining to the particular property in question because of its size, shape or topography; and
There is a stream that runs through the front yards of all the lots along 8th Street, which limits the buildable area of the property. The applicant received an administrative variance for the property to mitigate the impact of the stream on the site.

b. The application of this UDO to the particular piece of property would create an unnecessary hardship; and
The application of the zoning ordinance would not create an unnecessary hardship. While the presence of the stream has pushed the house toward the rear of the property, limiting the allowable depth of a rear deck to approximately 5.4 feet, the applicant could construct an at-grade patio within the rear yard setback.

c. Such conditions are peculiar to the particular piece of property involved; and
There are no conditions that are peculiar to the particular piece of property involved. The property does have a stream that runs through the front yard of the property at the right-of-way. The stream runs through the front of all the lots along 8th Street between Park Lane and Knox Avenue.

d. Such conditions are not the result of any actions of the property owner; or
The conditions of the property are the result of actions of the owner. The property owner built an unapproved, elevated wooden deck that encroaches into the required rear yard setback. The approved building permit plans included a 12-foot x 24-foot concrete patio at grade that was permitted to encroach into the rear yard setback.

e. Relief, if granted, would not cause substantial detriment to the public good nor impair the purposes or intent of this zoning ordinance.
Relief, if granted, may cause detriment to the public good and impair the intent of the zoning ordinance. The intent of the ordinance is to provide adequate separation of the deck from the property lines, which is not met by the proposed placement of the deck. Approval of the variance could also cause detriment to the public good, due to it being visible from the neighboring properties adjoining the property.

**Staff Recommendation:**
Staff recommends **DENIAL** of the variance in application PZ2019-519. Should Mayor and Council approve the variance request, staff recommends the following conditions of approval:

1. Development shall be in substantial conformance with the revised site plan received August 7, 2019, with revisions as required by conditions of approval as received and approved by the Planning and Development Director.

2. The applicant shall plant screening vegetation between the deck and rear property line, per the review and approval of the Planning and Development Director.
**Attachments:**
Attachment 1 – Exhibit A: Site Plan labeled Received August 7, 2019.
Attachment 2 – Application
Attachment 3 – Location Maps

*Existing conditions*
Existing conditions – Facing West

Existing conditions – Facing North