Board of Adjustment
Zoning Variance
Staff Report & Findings

TO: City of Asheville Board of Adjustment **DATE:** February 8, 2016

FROM: Shannon Tuch, RLA
Zoning Administrator

PREPARED BY: Ricky L Hurley, AICP
Plans Review Coordinator

SITE INFO: Tax Description (PIN#): 9649-60-1252-00000
Street Address: 23 Hazzard Street
Zoning: RM-8 (Residential Multi-family High Density)
Property Owner: Rupa V. Russe

Summary Statement:

The petitioner, Rupa Russe, is requesting a variance to Section 7-10-2(f)5 of the UDO to reduce the side setback for an existing non-compliant storage shed to remain (after-the-fact). The storage shed was installed under Building Permit # 12-02146 but found during the inspection process to be in violation of the required side setback. The inspection was failed and the property owner was informed of the violation. Section 7-10-2(f)5 establishes that *"Accessory buildings and structures may encroach into any required side and rear setback, but no closer than six feet to the side or rear property line."*

Variance Request(s):

Type of Variance	UDO Requirement	Applicant Request	Variance
Side setback (West)	6'	1'	83% or 5'

Background:

The project site consists of one parcel comprising 0.14 acres or approximately 6,098 square feet according to the Buncombe County tax record. The property currently supports an existing single family house built in 1915 along with a 352 square foot detached garage that was converted in 2012 into an accessory storage building. The site is zoned RM-8 and is located within the City of Asheville's corporate limits.

On April 9, 2013, the petitioner applied for a permit to build a second detached, 160 square foot accessory structure. During the application process, the petitioner assumes an old fence line to be the northwestern property line and misrepresents the precise location of that property line on the site plan. Based on the information supplied by the petitioner, the location of the shed would have complied with all setback requirements and a permit was issued on April 15, 2013 (BP# 13-02084). After the permit was issued and during a routine building inspection, the inspector field verified the property line based on the existing corner pins and discovered the encroachment and disapproved the inspection. The applicant/property owner failed to correct the building error after the failed inspection and a complaint was filed on September 15, 2015 regarding the shed being too close to the neighboring property. As part of the investigation into the complaint, the City's Zoning Enforcement Officer researched the permit history and issued a Notice of Zoning Violation on September 17, 2015 informing the property owner of the violation and providing a 30-day grace period to correct it. At the petitioner's request, a single 30-day

extension was also granted so that the she could have additional time to research options that may allow the shed to remain in its current location.

Review, Analysis & Considerations:

- The subject property is zoned RM-8 (Residential Multifamily High-Density) and is bounded by Residential Multifamily High-Density zoned properties on all sides.
- The property is 6,098 square feet and exceeds the 5,000 square foot minimum for the RM-8 zoning district.
- The property has 100 feet of frontage and exceeds the 50 foot minimum for the RM-8 zoning district.
- Properties surrounding the subject property and in the near vicinity have a historic development pattern of smaller, non-conforming lots. The subject property is larger than the average lot in the area.
- Detached accessory structures are uncommon in this neighborhood and are not part of the historic development pattern.
- Topography on the property is very mild and is easily developed.
- A building permit (BP# 13-02084) was issued on April 15, 2013 to construct a 160 square foot storage shed.
- A routine inspection during the shed's construction revealed the encroachment and the inspection was disapproved and a red tag was issued.
- Between the spring of 2013 after the shed failed its inspection, up to September 2015 when the complaint was filed, the property owner did not correct the violation.
- The subject structure, as currently sited, is setback approximately one to three feet from the side property line.

Driving Directions:

From downtown, proceed south on South Charlotte Street. Turn left on Hazzard Street and proceed approximately 300 feet, subject property is on right.

FINDINGS:
In order for the Board of Adjustment to grant this variance request, the following findings of fact must be made:

1) An unnecessary hardship would result from the strict application of the ordinance.

2) The hardship results from the conditions that are peculiar to the property, such as location, size, or topography.

3) The hardship did not result from actions taken by the applicant or the property owner.

4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Date Petition Filed: January 22, 2016
Date Reviewed by Board of Adjustment: February 22, 2016
Determination by the Board: To Be Determined