

**NOTICE OF PUBLIC HEARING  
CITY OF UNIVERSITY HEIGHTS  
BOARD OF ADJUSTMENT**

The University Heights Board of Adjustment will meet April 22, 2013 at 7:00 p.m. at the University Heights City Office, 1004 Melrose Avenue, University Heights, Iowa, to consider the following matter:

Application for a variance from the University Heights Zoning Ordinance to permit a garage at 35 Olive Court to be enlarged and remain constructed closer than 2 feet from adjoining lot lines.

This meeting will be a public meeting. Written comment concerning the applications may be submitted to the undersigned in advance of the meeting.

CITY OF UNIVERSITY HEIGHTS BOARD OF ADJUSTMENT

By: Steven E. Ballard  
LEFF LAW FIRM, L.L.P.  
222 South Linn  
P.O. Box 2447  
Iowa City, Iowa 52244-2447  
[ballard@lefflaw.com](mailto:ballard@lefflaw.com)  
ATTORNEY FOR THE CITY OF UNIVERSITY HEIGHTS

THE LAW OFFICES OF  
**LEFF LAW FIRM, L.L.P.**

CHARLES T. TRAW  
RANDALL B. WILLMAN  
STEVEN E. BALLARD  
MARK C. DANIELSON  
TIMOTHY S. GRADY  
THOMAS E. MAXWELL  
PATRICK J. FORD

222 SOUTH LINN STREET  
P.O. BOX 2447  
IOWA CITY, IOWA  
52244-2447

TELEPHONE: (319) 338-7551  
FACSIMILE: (319) 338-6902  
[www.lefflaw.com](http://www.lefflaw.com)

ARTHUR O. LEFF (1906-1989)  
PHILIP A. LEFF (Of Counsel)  
R. BRUCE HAUPERT (Of Counsel)

Writer's email: [ballard@lefflaw.com](mailto:ballard@lefflaw.com)

March 26, 2013

Via Email Only

Mr. Thomas Breese - [capttrb@gmail.com](mailto:capttrb@gmail.com)  
Dr. Michael Flaum - [michael-flaum@uiowa.edu](mailto:michael-flaum@uiowa.edu)  
Ms. Rachel Stewart - [Rachel-stewart@university-heights.org](mailto:Rachel-stewart@university-heights.org)  
Ms. Margaret Donnelly - [russcl802@aol.com](mailto:russcl802@aol.com)  
Ms. Ann Dudler - [ann@adudler.com](mailto:ann@adudler.com)

**Re: Board of Adjustment Meeting April 22, 2013  
Variance Application - 35 Olive Court**

Ladies and Gentlemen:

The University Heights Board of Adjustment will meet at 7:00 p.m. April 22, 2013, at the University Heights City Office, 1004 Melrose Avenue. At this meeting, the Board of Adjustment will consider an application for variances from Allison Wagner regarding her property at 35 Olive Court.

Ms. Wagner seeks a variance from the Zoning Ordinance to enlarge the garage at her home but keeping the garage near the lot line so she may preserve a well-established tree. Ms. Wagner's letter setting forth her variance request is enclosed. The circumstances giving rise to the request are summarized thus:

- The existing detached single-car garage at 35 Olive Court is built on or very near the south and west lot lines.
- The home at 35 Olive Court and the home at 55 Olive Court (immediately to the south) share a common driveway.

University Heights Board of Adjustment

Re: April 22, 2013 BoA Meeting

March 26, 2013

Page 2

- To accommodate movement of vehicles on the shared driveway, Ms. Wagner desires to enlarge the single-car garage into a double-car garage.
- Ms. Wagner desires to enlarge the garage by moving the north wall farther north but keeping the garage on or near the south lot line and the west lot line.
- Ms. Wagner does not want to move the garage off the south and west lot lines because she is concerned that doing so will threaten the root system of a well-established tree in the back yard.
- Ms. Wagner has secured signed acknowledgements from neighbors indicating that they do not object to the requested variance. Those acknowledgements are enclosed.

The Zoning Ordinance sets forth the following yard regulation:

If a garage is detached from the primary dwelling structure, the garage may be located in the rear yard, provided, however, that it is not less than 60 feet from the front lot line, in which event there shall be a minimum distance of 2 feet from any overhang or projection of the garage to any lot line.

Ordinance 79(8)(C) (emphasis added). The garage at 35 Olive Court is more than 60 feet from the front lot line, so it is permitted in the rear yard. The proposed two-stall garage would also be permitted, except for its proposed location so near to adjoining lot lines.

The existing garage may continue to be used even though it is located within 2 feet of the south and west lot lines because the garage is a "pre-existing nonconforming building"; in other words, it is "grandfathered". Ordinance 79(16)(A). The Zoning Ordinance goes on to say, however, that a nonconforming building may not be enlarged or extended. Ordinance 79(16)(D)(1-2). Thus, unless the Board of Adjustment grants a variance, the single-stall garage at 35 Olive Court may continue as it exists, but it may not be enlarged into a two-stall garage.

The Board of Adjustment has authority to vary the terms of the Zoning Ordinance's yard regulations. Ordinance 79(15)(3)(c). In

University Heights Board of Adjustment  
Re: April 22, 2013 BoA Meeting  
March 26, 2013  
Page 3

considering the requested variance, the Board must consider the following:

1. Whether the variance will is contrary to the public interest;
2. Whether special conditions make literal enforcement of the ordinance an unnecessary hardship;
3. Whether the variance is consistent with the spirit of the ordinance and will promote substantial justice; and
4. Whether the lot in question has exceptional or unusual physical conditions not generally prevalent in the neighborhood that prevent a reasonable or sensible arrangement of buildings on the lot.

Ordinance 79(15)(3)(c).

As set forth in her letter, Ms. Wagner cites the existing tree and her strong desire to protect it as constituting an "exceptional or unusual physical condition[]" that warrants granting the variance. She notes that the existing garage already sits on or near the lot lines and the nearest neighbors consent to the requested variance.

The Board has considerable discretion in considering and applying the criteria listed above. I anticipate that Ms. Wagner will be at the meeting on behalf to answer questions the Board may have. I also expect to receive some supplemental material in support of the variance application, and I will send that along when I receive it.

Please call me or email if you have questions in advance of Thursday's meeting.

University Heights Board of Adjustment  
Re: April 22, 2013 BoA Meeting  
March 26, 2013  
Page 4

Very truly yours,

LEFF LAW FIRM, L.L.P.

A handwritten signature in black ink, appearing to read "S. Ballard", with a long horizontal flourish extending to the right.

Steven E. Ballard

Enclosures

Cc: The Hon. Louise From  
Ms. Allison Wagner, applicant  
Mr. Mark Walk, counsel for applicant  
Ms. Christine Anderson  
Mr. Josiah Bilskemper  
Mr. Terry Goerdts  
Mr. Norm Cate

sds/SEB/UH-BoA-35 Olive ltr re variance 0313

RECEIVED

JUL 12 2012

LEFF LAW FIRM, L.L.P.

WALK & MURPHY, P.L.C.  
ATTORNEYS AT LAW  
515 STATE STREET  
OSAGE, IOWA 50461

Web site: [www.iowalawpractice.com](http://www.iowalawpractice.com)  
TELEPHONE: 641-732-3796  
FAX: 641-732-5345

MARK L. WALK

July 11, 2012

AARON R. MURPHY  
[amurphy@iowalawpractice.com](mailto:amurphy@iowalawpractice.com)

Leff Law Firm, LLP  
c/o Steven E. Ballard  
222 South Linn Street  
P.O. Box 2447  
Iowa City, IA 52244-2447

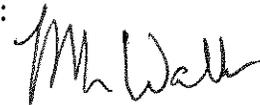
RE: 35 Olive Court Variance

Dear Mr. Ballard:

Please find enclosed a variance request. After your review, if you have further questions, please contact me. If you have no questions, could you please present this to the Council and let me know the results.

Best regards,

WALK & MURPHY, P.L.C.

By: 

MLW:bgs  
enc.  
H:\LETTERS\VARIANCE REQUEST (bgs)

Allison & Vianne are on  
vacation until 7-22  


Dear Sirs:

Please accept this letter as a request under your Zoning Ordinance Section 15.2(b) for a variance at 35 Olive Court, University Heights, Iowa. The request is for a variance from 8.C which requires a 2 foot setback from a lot line for a detached garage. This request is made based upon the physical condition of the lot. 15.3(c)(1).

I am enclosing with this letter the following:

1. An overhead map of the property.
2. Consents of the neighbors immediately to the North, South and West of the property.
3. Check in the amount of \$50.00 made payable to University Heights.

One neighbor to the West would not sign the consent. She said she is not against the project but she is afraid if she signs it and then for some reason her basement floods, her insurance coverage would not cover the loss. She said she would not object to it, she just would not sign the consent.

The reason for this request is that we share a driveway with our neighbor to the South. This is generally not prevalent in the neighborhood. Currently living at the house are my sister, Stephany Walk, who just completed nursing school and is now in the doctorate program, my husband, Vincent Wagner, who just completed his first year of medical school and me, Allison Wagner, a third year medical student.

We have two vehicles which we would like to have in the garage at night. However, since we only have one garage stall this is impossible. Also, when we have guests visit, we have one vehicle in the garage, one vehicle directly behind the garage and the visitors' cars block the driveway as there is no parking allowed on the streets. This inconveniences both our neighbor and us because one of them has to ask us to move the vehicles, then we have to go out and move the vehicles, let them exit, put the vehicles back in the driveway, then go back out when they come home, move our vehicles out so they can put their vehicle in and then move our vehicles back in. Allowing us to place a double garage on the lot will solve those problems.

The garage that is on the lot has been there for a number of years. It is built on the existing lot line to the south and very close on the existing west lot line. We are not asking to move the actual west and south locations of a new garage. A new garage would be build on the existing south and west line.

There is a large tree in the back yard and we are afraid that moving the garage two feet to the North would cut into the roots of the tree damaging, and possibly killing, the tree. We want to save the tree that is in the backyard.

In summary we are asking for a variance to build on the existing site but to expand the garage into a two stall garage rather than a one stall garage. This would require a variance from 8.C allowing

us to build on the existing lot line.

Thank you for your consideration of this matter.

Allison Wagner by MLW  
Allison Wagner  
35 Olive Court  
University Heights, Iowa 52246



Johnson County  
© Copyright 2011 Johnson County. All rights reserved.  
Printed: May 24, 2012

Johnson County, Iowa

We, Charles M. Karr and Melissa N. Karr, own the property located at 14 Leamer Court, University Heights, Iowa, located Southwest of Allison Wagner's house located at 35 Olive Court, University Heights, Iowa. We hereby consent to a variance being granted to Allison Wagner to build a double stall garage in her back yard, and further consent that it can be built within two feet of our property line.

Dated this 6<sup>th</sup> day of June, 2012.

Charles M. Karr  
Charles M. Karr  
Melissa N. Karr  
Melissa N. Karr

I, Brad F. Rourke, own the property located at 27 Olive Court, University Heights, Iowa, located directly North of Allison Wagner's house located at 35 Olive Court, University Heights, Iowa. I hereby consent to a variance being granted to Allison Wagner to build a double stall garage in her back yard.

Dated this 5 day of June, 2012.

  
\_\_\_\_\_  
Brad F. Rourke

We, David A. Zander and Heidi M. Zander, own the property located at 55 Olive Court, University Heights, Iowa. We hereby consent to a variance being granted to Allison Wagner whose property is located at 35 Olive Court, University Heights, Iowa, to build her garage within two feet of the property line between our property and her property.

Dated this 3<sup>rd</sup> day of June, 2012.

A handwritten signature in black ink, appearing to read 'D. A. Zander', written over a horizontal line.

David A. Zander

A handwritten signature in black ink, appearing to read 'Heidi M. Zander', written over a horizontal line.

Heidi M. Zander