

CITY OF BELVEDERE
RESOLUTION NO. 2023-25

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BELVEDERE DENYING APPEAL AS TO A VARIANCE AND
GRANTING VARIANCE FROM CHAPTER 19.48 TO ENCROACH INTO
THE REAR YARD SETBACK FOR THE PROPERTY LOCATED AT 53
ALCATRAZ AVENUE**

WHEREAS, a proper application has been submitted for a Variance under Chapter 19.84 of the Belvedere Municipal Code to allow the rear deck to encroach into the rear yard setback at the property located at 53 Alcatraz Avenue; and

WHEREAS, on April 18, 2023, the Planning Commission held a duly noticed public hearing and approved Design Review, Demolition Permit, and Variance applications for the residential addition and associated site improvements located at 53 Alcatraz Avenue;

WHEREAS, the City Council held a duly noticed public hearing on appeal on June 12, 2023 and considered all evidence in the record and presented at public hearing: and

WHEREAS, the City Council made the following findings of fact:

- 1. The granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.**

Granting the encroachment into the rear yard setback does not grant a special privilege to this particular lot because the proposed 444 square-foot deck will be consistent with other rear-yard decks in the vicinity. The surrounding parcels with rear decks include:

- 85 Bellevue Avenue: 1,246 square-foot deck
- 79 Bellevue Avenue: 776 square-foot deck
- 71 Bellevue Avenue: 756 square-foot deck
- 57 Bellevue Avenue: 351 square-foot deck
- 49 Alcatraz Avenue: 388 square-foot deck

The Variance is required because 93 square-feet of the deck would encroach the 10-foot rear yard setback. The applicant wishes to expand the existing 313 square-foot deck to better utilize the rear yard. The existing deck is narrow, with limited accessibility along its southern side. The deck expansion is also necessary to provide access for the larger home. Additionally, the deck provides a means of egress from the kitchen, living, and bedroom areas in the case of an emergency. If not for allowing a deviation from the setback requirements of the Belvedere Municipal Code, the property owners would not have the ability to utilize their home similarly to those in the vicinity, which is a privilege enjoyed by other properties under the identical zoning classification.

- 2. Because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the Zoning Ordinance section would deprive this property of privileges enjoyed by other properties in the vicinity and under identical zoning classification, so that a denial of the application would result in undue property loss.**

There are special circumstances applicable to the property that would prevent privileges enjoyed by others if the strict application of the Zoning Ordinance was applied. 53 Alcatraz Avenue previously shared a single lot with 49 and 51 Alcatraz Avenue. In 2008, the lot was subdivided, creating two substandard sized lots. The lot split is a special circumstance as it created a substandard, 4,460 square-foot lot for 53 Alcatraz Avenue. The site's relatively small size of 4,460 square feet limits the owner's options for development without any encroachments.

Additionally, the Belvedere Municipal Code requires nonconforming structures to conform to current zoning standards when the structure is proposed for demolition. Here, the existing rear deck sits within the rear-yard setback. Under the strict application of the zoning ordinance, the deck would have to be removed. To recreate a conforming deck, the house would have to be relocated or the home's size be reduced. Relocating the house is not a feasible alternative given the substandard size of the lot. Reducing the home's size to create a conforming deck restricts the property owner from developing a home up to current zoning standards enjoyed by other properties in the R-1C zoning district.

Surrounding parcel sizes in the vicinity include:

- 80 Alcatraz Avenue: 10,790 square-feet
- 74 Bellevue Avenue: 11,182 square-feet
- 82 Alcatraz Avenue: 10,606 square-feet
- 79 Bellevue Avenue: 8,613 square-feet
- 85 Bellevue Avenue: 6,335 square-feet
- 49/51 Alcatraze Avenue: 5,510 square-feet

Other properties in the vicinity with the same zoning classification have been allowed to make similar expansions; but the substandard lot size and structure's location prevents the applicant from doing so without expanding the encroachment. Therefore, denial of the Variance application would result in undue property loss.

3. The granting of this Variance will not be detrimental to the public health, safety or welfare, or injurious to the property or improvements of owners of other premises, or to the quiet enjoyment of their premises.

The granting of the Variance for the rear deck into the rear yard setback will not be detrimental to the public health, safety or welfare, or injurious to the property or improvements of owners of other premises, and all construction will be governed by the uniform Building Code requirements as well as regulations restricting the construction impacts and the project conforms to the Design Review criteria.

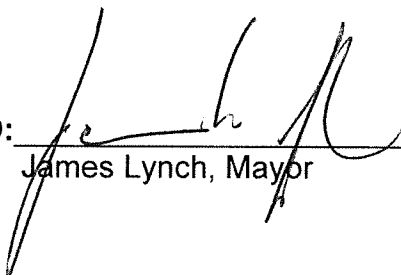
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belvedere does hereby grant a Variance from the requirements of Chapter 19.48 of the Belvedere Municipal Code to allow the rear deck to encroach 93 square-feet into the rear yard setback at 53 Alcatraz Avenue.

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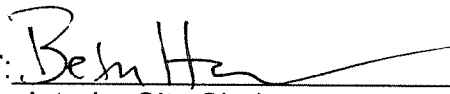
PASSED AND ADOPTED at a public hearing of the City Council of the City of Belvedere on June 12, 2023, by the following vote:

AYES: Cooper, Kemnitzer, Mark, Wilkinson, Lynch
NOES: None
ABSTAIN: None
ABSENT: None

APPROVED:


James Lynch, Mayor

ATTEST:


Interim City Clerk