

# BOARD OF ADJUSTMENT STAFF REPORT

## Kasai Residence Accessory Structures Case #420-08-002: Variance request to legalize existing accessory structures in a front and side yard at 1715 South 2300 East February 25, 2008



Planning and Zoning Division  
Department of Community  
Development

**Applicant:**

Kimi Kasai

**Staff:**

Nick Britton, Principal Planner  
535-7932  
nick.britton@slcgov.com

**Tax ID:**

16-15-182-002

**Current Zone:**

R-1/7,000 (Single Family  
Residential)

**Master Plan Designation:**

Low Density Residential

**Council District:**

Council District 6  
J.T. Martin

**Area:**

7,224 square feet

**Current Use:**

Single family residence

**Applicable Land Use**

**Regulations:**

- 21A.40.050A: Location of Accessory Buildings in Required Yards

**Exhibits:**

- Site Plan
- Elevations
- Application Material
- 1974 Zoning Ordinance Information
- Building Permits Information
- 1977 Zoning Review
- Additional Material from Applicants

**REQUEST**

Kimi Kasai of 1715 South 2300 East is requesting a variance to legalize existing accessory structures in the front and side yard. The subject parcel is 7,224 square feet and located in the R-1/7,000 zoning district. The principal structure is 700 square feet and there are six accessory structures on the property, totaling approximately 652 square feet. Three of the structures are in the rear yard and the other three are in the required side and front yard setback. According to the applicant, all of the structures were built sometime in the 1970s. There were two building permits issued to a previous owner for the allowance of a tool shed and a block storage building (Exhibit E). However, a visual inspection of the property shows neither structure still exists.

**POTENTIAL MOTIONS**

**Approval**

From the evidence and testimony presented and pursuant to the plans submitted, I move that the Board grant the variance to legalize the existing accessory structures in the side and front yard of the property at 1715 South 2300 East because:

1. Holding the petitioner to the regulations of the ordinance would cause an unreasonable hardship that is not necessary to carry out the general intent of the ordinance;
2. A special circumstance is attached to the property that does not generally apply to other properties in the R-1/7,000 Zoning District;
3. Granting the variance is essential to the enjoyment of a substantial property right, which is enjoyed by other property owners in the district;
4. The allowance will not affect the general plan nor be contrary to public interest; and
5. The plan meets the spirit and intent of the Zoning Ordinance.

**Denial**

From the evidence and testimony present and pursuant to the plans submitted, I move that the Board deny the variance to legalize the existing accessory structures in the side yard of the property at 1715 South 2300 East because:

1. Literal enforcement of the ordinance does not cause an unreasonable hardship;
2. The Board is unable to identify a special circumstance attached to the property, which relates to a development hardship;
3. Granting the variance is not essential to the enjoyment of a substantial property right;
4. The proposed addition will be contrary to the public interest; and
5. The proposed plan does not meet the spirit and intent of the Zoning Ordinance.

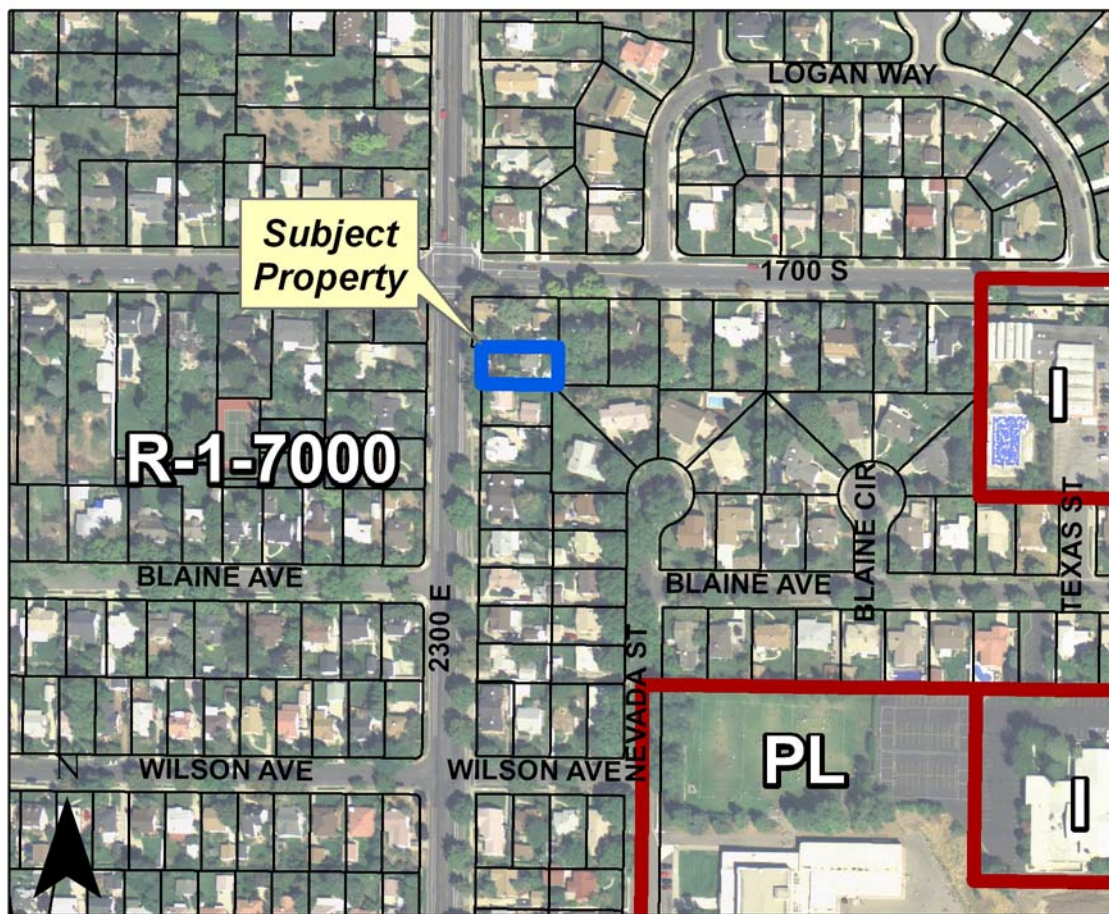
**Conditions**

1. The applicant must come into compliance with the code regarding building materials and outside storage as identified in the notice from Zoning Enforcement.
2. All non-structural roof materials, such as tarps, shall be removed.

**PUBLIC NOTICE / COMMUNITY COUNCIL INPUT**

Notice of this variance request was mailed to all property owners within eighty-five (85) feet of the subject property at least fourteen (14) days prior to the scheduled Board of Adjustment public hearing. The subject property was posted by the city with a notice of public hearing sign on February 15, at least ten days in advance of the public hearing. Community council review of variances is not required by city code.

## Vicinity Map



## Analysis

### *Property History*

The subject property is located in the R-1/7,000 Zoning District and was part of the R-2 Zoning District prior to the 1995 ordinance rewrite. The applicant has informed staff that five of the six accessory structures in question were constructed in 1976. A 144 square foot structure in the rear yard was built in 1947. However, because there are no permits on file for these structures, staff is using the 1974 code to verify compliance with accessory structure regulations in the R-2 district (see Exhibit D). The ordinance allowed accessory structures up to 720 square feet provided the coverage did not exceed 50 percent of the rear yard. An aerial photograph of the area taken in 1982 indicates that all of the structures in question were in existence by that year.

A previous owner of the property took out two building permits (see Exhibit E). The first permit was received in 1959 for a tool shed in “the rear of residence” measuring seven feet by seven feet or 49 square feet. The second permit was received in 1970 for a “new block storage building” measuring 1 story and 130 square feet in size. There is no evidence that these structures still exist or were incorporated into the existing accessory structures on the property. There is no other building permit information for the property. There is evidence that the applicant approached the Building Permits office in 1977 regarding an addition that was never built and received preliminary zoning approval (see Exhibit F). The site plan shows the principal structure and two accessory structures, one in the rear yard and one in the front yard. The notes on the site plan appear to only reflect the proposed addition to the principal structure. Staff does not find that this zoning review in any way

reflects the legality of the front yard accessory structure (which is the carport, though not labeled as such). Building Permits reviewed copies of the site plan and no evidence was found that a permit was actually issued for the requested addition at the time.

According to Building Services staff, permits were not required for accessory structures less than 120 square feet prior to 2003. However, Building Permits has in the past required site plans for zoning review regardless of the structure's size to ensure compliance with the underlying zoning because, regardless of the structure size, they are required to meet setback and coverage requirements. Two of these accessory structures in question exceed 120 feet and would have required building permits at the time of their construction.

### ***Request***

The applicant's request comes as the result of zoning enforcement action. The applicant is requesting a variance for building coverage excess and setback relief for the existing accessory structures. However, because it appears the structures were built prior to the 2005 compatible infill ordinance, they would not be held to the square footage limit of 50 percent of the principal structure, nor would they be subject to the rear property line setback. Assuming the structures were built in 1976, the regulations for accessory structures were as follows:

- The accessory structure had to be in the rear yard;
- the accessory structure or structures could total no more than 720 square feet;
- the accessory structure could not exceed one story;
- the accessory structure had to be located at least four feet from the subject property's principal dwelling and 15 feet from neighboring dwellings; and
- the accessory structure must cover less than fifty percent of the rear yard.

In 1974, the required side yard in the R-2 Zoning District was 35 percent of the principal structure's height but at least 8 feet. In the 1974 Zoning Ordinance, there is an exception for garages in the side yard provided the structure met some spacing requirements, as follows:

- The accessory structure must be a garage or carport;
- the accessory structure must be located at least 15 feet from a neighboring principal structure;
- the accessory structure must be located at least 10 feet from the subject property's principal structure; and
- the accessory structure must be located at least 60 feet from the front property line.

The side and front yard accessory structures do not meet all of these requirements. Accessory structures were not allowed in the front yard, however. The definition for a front yard for an interior lot was "an open, unoccupied, landscaped space, on the same lot with a building, between the front line of the building and the street line." The carport is entirely in front of the principal structure's front façade and therefore in the subject property's front yard by definition

The applicant's site plan indicates there are six accessory structures on the property, three in the rear yard and three in the front and side yards (see Exhibit A). The three accessory structures in the rear yard measure approximately 10 feet by 10 feet (100 square feet), 6 feet by 14 feet (84 square feet), and 12 feet by 12 feet (144 square feet) for a total of 328 square feet. These structures meet the zoning requirements of the 1974 zoning ordinance as they are in the rear yard, cover only 24 percent of the rear yard, and are more than four feet from the principal structure or 15 feet from a neighboring principal structure. They also are within the square footage limit of 720 square feet for accessory structures.

The three structures in the front and side yards measure 16 feet by 5 feet (80 square feet), 10 feet by 10 feet (100 square feet), and 9 feet by 16 feet (144 square feet) for a total of 324 square feet. These structures are, respectively, referred to as a “carport,” a “deck,” and a “long deck.” They are not attached to the principal structure and the site plan indicates that they are all at least four feet from the principal structure. The plans indicate that there is an awning between the principal structure and two of these accessory structures, creating a covered area measuring 192 square feet. According to the plans, two of the accessory structures are “up against” a six foot fence in the side yard and within eight feet (the required side yard) of the southern property line. These accessory structures do not comply with the 1974 zoning ordinance, which stated that all accessory structures had to be in the rear yard or in the side yard provided they meet the aforementioned use and spacing requirements.

The applicant is requesting that the Board of Adjustment legalize the three accessory structures in the front and side yards. The three accessory structures in the rear yard meet the zoning requirements that were in place in 1974 in terms of setback, size and location. Furthermore, the total square footage of all accessory structures on the subject property is less than the 1974 limit of 720 square feet. Thus, the rear yard accessory structures are legal, complying structures. The variance required for this property is for the locations of the side and front yard accessory structures, which do not meet Sections 51-5-5(9) and 51-13-1(13) of the 1974 Salt Lake City Zoning Ordinance and Section 21A.40.050A(1) of the current Zoning Ordinance, both which prohibit accessory structures in the front and strictly regulate garages in the side yard of a residential lot.

### ***General Standards of Review***

The standards required for granting a variance are set forth in Utah Code 10-9-707 and Salt Lake City Code 21A.18.060.

### **Standard 1: Does literal enforcement of the Zoning Ordinance cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the Zoning Ordinance?**

Section 21A.18.060B provides direction to the Board of Adjustment in determining an unreasonable hardship. Section 21A.18.060B(1) states:

The alleged hardship is related to the size, shape or topography of the property for which the variance is sought:

*Analysis: The subject property is located in the R-1/7,000 Single Family Residential Zoning District. The property’s square footage is 7,224 which exceeds the minimum lot area for the zoning district. Staff finds no evidence that a hardship arises from the property’s size, shape or topography that would necessitate locating three accessory structures in the required front and side yard setbacks.*

Section 21A.18.060B(2) states:

The alleged hardship comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood:

*Analysis: The subject property is 56 feet in width and 129 feet in depth. The front yard is 80 feet deep and the rear yard is 24 feet deep (the principal structure accounts for the remaining 25 feet of the depth). The principal structure is set back farther than most of the houses on the block, which are all setback approximately 20 to 25 feet. In the R-1/7,000 Zoning District, the required rear yard is 25 feet. The subject property has a rear yard that is slightly less than the required setback. Under the 1974 ordinance, the applicant was limited to 720 square feet of accessory structures in the rear yard provided the accessory structures did not cover more than 50 percent of the rear yard. The applicant’s rear yard is 1,344 square feet, so they would have been limited to*

approximately 672 square feet (the existing accessory structures total 652 square feet). Under the current ordinance, the applicants would be limited to only 480 square feet (the maximum accessory structure size allowed based on the principal structure's size of 700 square feet). The applicants currently have three accessory structures in the rear yard for a total of approximately 328 square feet with rear yard coverage of 24 percent. A 480 square foot structure would only cover 36 percent of the rear yard. Staff finds that the subject property does have a rear yard that is smaller than normal rear yards in the R-1/7,000, but it does not prevent them from accommodating the existing rear yard accessory structures. Although the principal building sits back farther than others in the area, accessory structures are prohibited in the front or side yard set back area.

**Standard 2: Are there special circumstances attached to the property that do not generally apply to other properties in the same district?**

Section 21A.18.060D provides direction to the Board of Adjustment in determining whether or not there are special circumstances attached to the property. Section 21A.18.060D(1) states:

The special circumstances relate to the alleged hardship.

Section 21A.18.060D(2) states:

The special circumstances deprive the property of privileges granted to other properties in the same zoning district.

*Analysis:* Staff can find no special circumstances that deprive the property owner of privileges granted to other owners in the R-1/7,000 Zoning District. As mentioned in Standard 1, the applicant could build an accessory structure in the rear yard under both the 1974 and the current zoning ordinances, despite the fact that their rear yard is considerably smaller than other properties in the R-1/7,000 Zoning District. The 1974 Zoning Ordinance never allowed accessory structures in the front yard and only allowed them in the side yard under certain circumstances. The existing accessory structures were built illegally and were never recognized as meeting the city's zoning ordinance.

**Standard 3: Is granting the variance essential to the enjoyment of a substantial property right possessed by other properties in the same district?**

*Analysis:* Staff has no evidence that the applicant has been deprived of a substantial property right that other properties in the R-1/7,000 Zoning District possess. The subject accessory structures were not allowed in the front or side yards under previous zoning ordinances.

**Standard 4: Will the variance substantially affect the general plan or be contrary to the public interest?**

*Analysis:* The variance would allow the applicants to keep three accessory structures that are within the interior side and front yard. There is evidence that this would substantially affect the general plan because it is contrary to the ordinance. The applicants have provided evidence that there is neighborhood support for the existing structures, but the variance request does stem from a zoning enforcement case. Furthermore, because there are no evident hardships on the subject property, it would be contrary to the public interest to deviate from the applicable land use regulations found in the zoning ordinance.

**Standard 5: Is the spirit of the Zoning Ordinance observed and substantial justice done?**

**Analysis:** *The Zoning Ordinance requires open yard areas to ensure adequate light and air between structures and to provide an open space buffer between uses. Accessory structures are limited to the rear yard to preserve spacing between homes and to ensure accessory structures are separated from principal structures on abutting lots. In cases where a hardship is associated with a parcel of land due to the size, shape, and topography of the property, a variance may be granted to provide relief. Staff finds that there is not a size, shape, or topography hardship associated with this request; therefore, the spirit of the Zoning Ordinance would not be observed if the variance were granted.*