

**CITY OF RICHARDSON
ZONING BOARD OF ADJUSTMENT MINUTES
SEPTEMBER 18, 2024**

The Zoning Board of Adjustment met on Wednesday, September 18, 2024, at 6:30 p.m. Chairman Lemons convened the Board into Regular Session. A quorum was present.

MEMBERS PRESENT: Jason Lemons, Chairman
Scott Rooker, Vice Chairman
Phil Thames, Member
Lisa Kupfer, Member
Mohamed Hafeez, Alternate

MEMBERS ABSENT: Brent Sturman, Member
Moosa Madha, Alternate

CITY STAFF PRESENT: Charles Goff, Assistant City Manager
Dan Tracy, Assistant Director of Development
Services – Engineering and Development
Amber Pollan, Planner
Norma Mendoza, Administrative Secretary

BRIEFING SESSION

Prior to the start of the regular business meeting, members of the Zoning Board of Adjustment met with staff to receive a briefing on agenda items. No action was taken.

REGULAR BUSINESS MEETING

Opening comments: Chairman Lemons introduced City staff and explained that the staff serves in an advisory capacity and does not influence any decisions the Board might make. Chairman Lemons summarized the function, rules, and appeal procedures of the Zoning Board of Adjustment.

1. APPROVAL OF MINUTES FROM AUGUST 21, 2024.

Chairman Lemons noted an incomplete sentence on page 5 of the minutes. Staff will review and bring back with correction at next meeting.

Motion: Member Thames made a motion to continue approval of the August 21, 2024, minutes until October 16, 2024. Member Kupfer seconded the motion. Motion passed 5-0.

PUBLIC HEARING

2. V 24-05 (continued from July 17, 2024), a request for the following variance from Richardson’s Code of Ordinances: Ordinance No. 2360-A Sec. 2(E)(1) to allow a 4-foot variance to the 20- foot front yard setback along E. Spring Valley Road, to accommodate the construction of a new structure on property located at 701 Rams Court, being the southeast corner of E. Spring Valley Road and Rams Court and zoned R-1100-M Residential.

Ms. Pollan indicated the applicant, Ahmed Taha, is out of the country and unable to attend the September meeting. Mr. Ahmed is requesting that his variance request be continued to the October 16, 2024, meeting. He is working on some designs and options that may include information for the Board's consideration.

BOARD ACTION

Motion: Member Rooker made a motion to continue **V 24-05** to the October 16, 2024, Zoning Board of Adjustment meeting. Member Kupfer seconded the motion. Motion passed 5-0.

- V 24-06**, a request for the following variance from Appendix A (Comprehensive Zoning Ordinance) of the City of Richardson's Code of Ordinances: Article VII, Sec. 4(f)(1)(c) to allow a 5-foot variance to the 15-foot side yard setback to accommodate the replat of a nonconforming property located at 406 S. Cottonwood Drive and zoned R-1100-M Residential.

Ms. Pollan oriented the Board to the site, history, and request. The request for a variance from Appendix A of the Comprehensive Zoning Ordinance to allow for a variance to the 15-foot side yard setback.

The applicant is remodeling the first floor of the home and proposing an addition of a second floor over a portion of the residence. The applicant's request is to extend that second story addition into the required 15-foot side yard setback. The home was originally constructed in 1980 across two lots, Lot 11 and Lot 12. The 15 foot setback requirement is based on the combined lot width. The applicants have indicated that they don't see negative impact to the public health, safety, and welfare. Ms. Pollan agrees that there's not necessarily a safety or health impact with the variance but based on the requirements for a physical property hardship, staff doesn't find that a hardship exists in this case. They would be able to do a second story addition that met the setback of 15 feet of this property line by adjusting the addition's layout. Staff's technical recommendation is that the request be denied. Ms. Pollan indicated she was available to answer any questions.

Chairman Lemons stated the original setback line was compliant and it changed at some point. Nothing that is being done affects the existing dwelling as it is – it is relative to the upper-level proposed addition. Chairman Lemons asked Ms. Pollan for confirmation.

Ms. Pollan responded that's correct.

Chairman Lemons requested clarification that if the north side wall of the addition were moved back by 3 feet, then it would be in conformance, is that right?

Ms. Pollan responded that's correct.

With no questions for staff, Chairman Lemons asked the applicant to come forward and present the request.

Mark Spradling, 406 S Cottonwood Drive, Richardson, TX, 75080. Mr. Spradling began by saying the hardship comes because of the financial investment they made for the drawings, the plans, and the engineering of the foundation to support the second floor. He stated that they have already paid to install the beams based on the proposed layout of the second floor, and so they

would have to scrap that and it would create a big financial loss to start over. The applicant believes it's necessary to have the variance and that the proposed design fits harmoniously with the neighborhood.

Member Kupfer asked the applicant if they understand the Board can consider some financial element to the hardship but can't approve if it's solely financial.

Mr. Spradling responded yes.

Chairman Lemons asked the applicant if they considered moving the upper level back by three (3) feet to bring it in conformance?

Mr. Spradling responded that he considered it, but he can't afford it.

Ms. Kupfer asked if they had spoken to anyone from like Building Services prior to drawing up the plans?

Mr. Spradling responded the architect drew and submitted for the permit and that's when they found out the code changed. This was compliant in 1980 and it changed at some point in time. He purchased the home in 2013.

Chairman Lemons asked if there was anyone else who wished to speak in favor or in opposition of this request.

Mr. Bruce Stahl, lives at 1419 Stagecoach. He asked for clarification on the setback requirements.

Ms. Pollan responded the side yard setback for a residential property in the zone is 15 feet and the home currently sits at 12 feet.

Chairman Lemons stated it's 3-foot difference.

Mr. Stahl stated he does not see any reason why this should not be approved. He is speaking in favor of the request.

With no further questions for staff or applicant, Chairman Lemons closed the public hearing and asked the Board further dialogue or a motion.

Member Rooker asked staff if they knew when the code changed?

Ms. Pollan responded no. Based on the building permit records from 1980, it seemed to indicate that it was built at a setback that was compliant with the code at the time.

Member Rooker asked if it was a smaller lot, then the setback requirement would be less?

Amber Pollan responded that's correct. If the lot was less than 80 feet in width, then the minimum side yard setback would be 7 feet. Where lots are 80 feet up to 120 feet in width, then the minimum side set back is 10 feet. Where the lots are greater than 120 feet in width, then the minimum set back is 15 feet. This property's width exceeds 120 feet. That is what puts it into the category of requiring 15 feet. There is variation on side setbacks in the neighborhood based on the lot's width.

Member Rooker asked the for clarification on the Code regarding lots being combined.

Ms. Pollan responded the Code says “where lots are created or combined” to determine the resulting lot width.

Member Rooker asked if the 15’ side yard setback would apply if the lots were not combined yet?

Ms. Pollan responded it would. Both lots are considered in determining the lot width for setbacks.

Member Rooker stated there is a Lot 11 and Lot 12 on the legal description. Shouldn't the review consider Lot 12 only?

Member Thames stated they built on two separate lots since the lots were never combined, but they built one house across the lots.

Ms. Pollan responded that's correct.

Chairman Lemons stated as he was reading through the case, he was looking at the replat as a secondary issue; however, discussing it here, it seems to be to their disadvantage to replat the lot to combine them just because that changes the calculus for the setback line.

Ms. Pollan responded it is a requirement of getting a building permit.

Member Rooker asked for clarification that the City is requiring a lot combination as part of the building permit, but this case is just in reference to a setback variance?

Member Hafeez stated that if Lots 11 and 12 are combined, the foundation slab that went on that property is already combined, correct?

Chairman Lemons stated right now you have two lots, but there's a foundation slab that is on both of those lots.

Member Hafeez stated that since it is already laid out, then would they consider 11 and 12 separately?

Member Thames stated if they are separate, then there is a setback for lot 11 and a setback for lot 12. The combined lots are 144 feet, which is greater than 120 feet, which is where the 15-foot requirement comes in. Taking the lots’ width individually, the side setback is 10 feet for both lots.

Ms. Pollan responded 10 feet is the side setback requirement for a lot less than 120’.

Member Rooker asked City staff about the property being legally non-conforming. If the first floor is modified, does it have to be legally conforming? Does the first floor also need to conform to the setback?

Ms. Pollan responded if they're not modifying the footprint of the building, then the building is considered legally existing, non-conforming. It can be modified internally.

Member Rooker asked if the trigger was modifying an exterior wall?

Ms. Pollan stated yes, it's the addition. Proposing an addition would be expanding a non-conforming building.

Mr. Thames stated that considering just lot 12 there would be no variance required because it has

a 12-foot site setback. Its width is less than 120 feet, in the 80 to 120' range, so a 10-foot setback is required.

Member Rooker stated you would then go to towards the reasoning to approve the variance because the consideration of just lot 12.

Ms. Kupfer asked if is it feasible within the plans to move the second story addition 3 feet and it still be functional?

Chairman Lemons responded it would be functional, but the applicant indicated that creates economic hardship for him. The Board is considering the lot itself - issues with topography or the shape of the lot. However, there is the matter of the replat being considered. There's still a question as to what is truly the setback line because as Mr. Hafeez said, there is a situation where a slab unifies these two lots that have not been unified by a replat. Under the strictest analysis, a 15-foot setback applies. The hardship may be that there is a question as to what the proper setback distance is.

Mr. Thames stated the hardship is that it wasn't replated in 1980 and the lots were not combined. They were allowed to be sold and built on as 2 separate lots.

Chairman Lemons stated one of the jobs of the ZBA is to protect the integrity of the Zoning Ordinance and to be careful about granting variances, especially when there's not specific circumstances with a lot that calls for it.

Member Rooker stated the legislature allowed the Board to entertain economic hardship.

Chairman Lemons indicated there's a formula for it.

Member Rooker stated the legislature allows consideration of economic hardship if it's over 50% of the value.

Mr. Thames asked about the replat process.

Ms. Pollan responded a replat going from two lots to one lot is an administrative process with the Development Services Department. That hasn't taken place yet.

Mr. Thames asked is that an ordinance or what is the legal basis for that?

Ms. Pollan replied it is the requirement of the building permit. Property lines trigger certain building codes for construction. There are certain requirements like fire codes that come into play such as fire separations for separate lots. Ms. Pollan gave the example of a townhome built on a lot line having to have firewalls and separations between units.

Member Thames indicated he is getting specific to homes built on multiple lots. There are dozens of cases throughout Richardson. If someone pulls a building permit and they are on two lots, then they must go through this replatting process even if they were previously unaware of the property's issue?

Mr. Tracy responded correct. Usually, it is caught at the building inspection level when permits are applied for. Like the case here, if they were just doing an interior remodel within the confines of the first story, that would be permitted. Because they're making improvements adding a second

story, that's what establishes the requirement to bring the lot into conformance.

Member Thames then asked when that process happens?

Mr. Tracy responded it has not happened yet, but it should happen prior to their building permit being issued.

Member Thames asked if the Board's determination on this case would impact how this is replatted?

Mr. Tracy responded yes, if they leave the property as it is without an addition, then we don't have to replat. It would stay two lots and still be legally existing nonconforming. If the applicant goes forward with a second story, it would be a requirement of the building permit to replat to one lot.

Member Thames clarified that is an administrative issue handled by the City staff, not another Zoning board or ZBA?

Mr. Tracy responded yes. The applicant would hire a surveyor to do the plat and then the City would review, sign, and file the plat.

Member Kupfer stated to clarify Mr. Thames's point, in this case replatting would not change the variance in their favor, correct? The replatted lot width requires the variance.

Member Thames responded yes. After replatting, Lot 11 and Lot 12 combined require a 15-foot variance. If Lot 12 is considered as it is right now, there is not a need for a variance. If this was two (2) houses, the Board wouldn't be having this meeting because the existing side setback is 12 feet and 10 would be needed. His concern is the replatting requirement, it seems to impact how the Board votes and what the City then does. If it had already been replatted then asked for a variance, that seems to be a different conversation versus if it hadn't been replatted yet.

Chairman Lemons stated this is a tough case. On the surface, it seems relatively simple. A lot of the time, the Board is looking at lot shape, topography, other issues and factors that do create a hardship. And there's not a qualified economic hardship here. He considers one of the charges of the Zoning Board is to protect the integrity of the zoning ordinances and not grant variances where there is not a strict hardship. This is one of those unusual cases where this is a reasonable request.

Member Rooker stated there are three (3) issues are in front of the Board: the lots are not combined so the Board may not have a variance in front of it, the encroachment is vertical, and an economic hardship analysis.

Chairman Lemons stated per statute, economic hardship can be considered in making a decision.

Member Kupfer followed up on her question regarding shifting the second story addition plans. She expressed concerns that a hardship is being invoked by enforcing the current ordinance when the logical thing would seem to be to build straight up on the existing building line. There needs to be considerations beyond a financial hardship.

BOARD ACTION

Motion: Member Thames made a motion to approve the 5-foot variance to the required 15-

foot side yard setback as presented. Member Rooker seconded the motion. Motion passed 5-0.

4. **V 24-07**, a request for a variance from Appendix A (Comprehensive Zoning Ordinance) of the City of Richardson's Code of Ordinances: Article I, Sec. 5 to allow a swimming pool, spa and related equipment to be located between the front property line along West Shore Drive and the front wall of a building. The property is located at 98 West Shore Drive and is zoned R-1500-M Residential.

Ms. Pollan introduced the request for V 24-07, a variance at 98 West Shore Drive to allow a swimming pool. The property is located at the end of West Shore Drive and the road comes down into cul-de-sac and loops to create an island of property where this home is located. All the sides of the home are considered a front yard, which is a unique feature of the property.

Ms. Pollan described the limited area where a pool could go on the property and the hardship of existing natural features. The variance would not be contrary to the public's interest.

Chairman Lemons thanked Ms. Pollan for the presentation and asked the Board if they had any questions for staff. As there were no questions for staff, he asked the applicant to present.

Bryce Richardson, 98 West Shore Place, stated he agrees with staff's presentation. In a normal backyard, the proposed pool location would be just fine. They have a unique situation with the frontage around their property and their goal is to keep the 16 trees they have on the lot.

With there being no one else speaking either in favor or in opposition to this request, Chairman Lemons closed the public hearing and asked the Board for further dialogue or a motion.

BOARD ACTION

Motion: Member Kupfer made a motion to approve **V 24-07** as presented. Member Thames seconded the motion. Motion passed 5-0.

With no further business, the meeting was adjourned at 7:23 p.m.

Jason Lemons, Chairman
Zoning Board of Adjustment