

MINUTES OF A MEETING OF THE BOARD OF ADJUSTMENT OF THE TOWN OF HIGHLAND PARK, TEXAS, HELD AT TOWN HALL, 4700 DREXEL DRIVE ON WEDNESDAY, SEPTEMBER 14, 2022, AT 8:30 A.M. TO CONSIDER A VARIANCE REQUEST TO SECTION 8-501 OF THE TOWN'S ZONING ORDINANCE TO CONSTRUCT A PORTION OF THE RESIDENCE INTO THE REQUIRED SIDE YARD SETBACK AT 4405 HIGHLAND AVENUE.

Present at the meeting were: Chairman Chuck Reeder and Board Members, Joan Clark, Stacey Furst, Alison Hunsicker, Robert McCulloch, Alternate Board Member Jim Yoder, and Alternate Board Member Nancy Rogers.

Chairman Chuck Reeder called the meeting to order and introduced the members of the Board, Hugh Pender, Director of Development Services. He proceeded to explain the procedure the Board will follow in considering the request. Also present from Town Staff were Serena Palomino, Permit Technician, and Matthew Boyle, Town Attorney.

Mr. Pender presented case 4405 Highland Avenue via PowerPoint presentation. The application submittal, Survey, construction photos, elevation plans, two-hundred-foot (200') buffer map and summary of the request was displayed and explained. Mr. Pender noted there is a current remodel on the home underway.

Chairman Reeder requested that the applicant present their case.

Jim Kruger with Coates Homes, 3100 Monticello Ave., stated the homeowner's goal is to preserve and renew the 100-year legacy of this home. Unfortunately, the builder experienced a collapse of the pre-existing Porte cochere during renovation. The existing construction of the Porte cochere was not secure. No one was injured. Mr. Kruger noted a variance was previously granted in 2020 regarding the garage along the alley.

Chairman Reeder questioned if staff received letters in support of this item. No responses were received.

Chairman Reeder asked if there was anyone in attendance who would like to speak in support of this item.

Brigham Wilson, owner, and applicant of 4405 Highland thanked the Board and stated the goal for this request is to remodel and preserve the character of this historic home. Construction costs can lower by not rebuilding this portion; however, the historic preservation is a priority to the owners.

Board Member Clark questioned if the architecture would remain the same. Mr. Wilson confirmed.

Chairman Reeder questioned if staff received letters in opposition for this item. No responses

were received.

Chairman Reeder asked if there was anyone in attendance who would like to speak in opposition. With no one to speak, Chairman Reeder closed the public hearing.

Board Member Clark created a motion, seconded by Board Member Hunsicker, to approve this request. The motion passed by unanimous vote.

MINUTES OF A MEETING OF THE BOARD OF ADJUSTMENT OF THE TOWN OF HIGHLAND PARK, TEXAS, HELD AT TOWN HALL, 4700 DREXEL DRIVE ON WEDNESDAY, SEPTEMBER 14, 2022, AT 8:30 A.M. TO CONSIDER A VARIANCE REQUEST FROM SECTION 15-101 OF THE TOWN'S ZONING ORDINANCE TO CONSTRUCT A FENCE IN THE REQUIRED FRONT YARD AT 4701 DREXEL DRIVE.

Mr. Pender presented the 4701 Drexel case via PowerPoint presentation. The application submittal, survey, site plan, front building line plan, elevation plan and summary of the request was explained and displayed. The homeowners were in attendance.

Chairman Reeder asked for clarification regarding the lot layout. Mr. Pender displayed a site plan, located Euclid Avenue/Drexel Drive, and located the neighbor's lot along Drexel Drive.

Board Member Clark questioned the distance between the proposed fence and sidewalk. Mr. Pender assumed about ten feet (10') and noted the applicant could possibly confirm.

Chairman Reeder requested that the applicant present their case.

Amy Bartell with Studio Outside, 824 Exposition Blvd. Suite 5, stated this project has been under construction for over two (2) years. The proposed fence will not be visible from the street due to landscape hedging. If granted, the proposed fence will serve as security to the owners and their pets. Due to the exposure, doors were installed to the existing carport and gates to the driveway. The fence proposal will be colored dark green to match the landscaping.

Chairman Reeder questioned if this was an issue from the previous variance request. Ms. Bartell clarified that this was an issue, however it was not brought forward until now.

Chairman Reeder questioned if staff received letters in support. No responses were received.

Chairman Reeder asked if there was anyone present who would like to speak in favor. No one was present.

Chairman Reeder questioned if staff received letters in opposition. No responses were received.

Chairman Reeder asked if there was anyone present who would like to speak in

opposition. No one was present.

Mr. Pender asked if the homeowner could speak regarding their request. Chairman Reeder accepted.

Steven Butt, 4701 Drexel Dr, provided the history of this historic home and noted only one yard exists. There is no security for the main structure nor back house. Mr. Butt thanked the Board for their time and consideration.

Chairman Reeder commented that he understands the difficulty with this lot, however front yard fences are a major issue for the Town.

Chairman Reeder created a motion to approve this request. With no second, the motion failed, and the request was denied.

MINUTES OF A MEETING OF THE BOARD OF ADJUSTMENT OF THE TOWN OF HIGHLAND PARK, TEXAS, HELD AT TOWN HALL, 4700 DREXEL DRIVE ON WEDNESDAY, SEPTEMBER 14, 2022, AT 8:30 A.M. TO CONSIDER A VARIANCE REQUEST FROM SECTION 13-103(D) OF THE TOWN'S ZONING ORDINANCE TO CONSTRUCT A PORTION OF A SWIMMING POOL IN THE FRONT HALF OF THE LOT LOCATED AT 3801 MAPLEWOOD AVENUE.

Mr. Pender presented the 3801 Maplewood case via PowerPoint presentation. Section 13-103(D), site plan, mid-point building line plan, renderings, fence/wall plan, two-hundred-foot (200') buffer map and summary of the request was explained and displayed. The homeowners were in attendance.

Alternate Board Member Yoder questioned the pool barrier provided on the site plan. Staff confirmed it appears to be an entry vestibule.

Board Member Hunsicker questioned if the proposed fence is in violation due to being in the front yard. Mr. Pender clarified this is proposed in the front half of the lot, not the front yard.

Chairman Reeder questioned if there is a specific reason as to why the pool cannot be placed behind the mid-point lot line. Mr. Pender believes this is the design the homeowner wishes and can answer this during their presentation.

Kirk Smith, 981 County Rd. 4918, presented this case via PowerPoint presentation. Mr. Smith explained the twenty-three linear feet (23') of the pool in front of the mid-point lot line, the property being a combined building site (2013), the history and intent of Section 13-103(D) when employed with the Town at that time, and the non-disturbance to surrounding neighbors due to the proposed placement on this corner lot. The site plan, renderings, neighbor notice letter, tree preservation/landscaping plan, alternate option renderings and letters of support map was displayed and explained.

Board Member Clark questioned the setback from the side property line. Mr. Smith confirmed it is forty-one feet (41') from the side property line. The side property line is about four feet (4') from the sidewalk.

Board Member Clark questioned the proposed fence material. Mr. Smith confirmed a masonry wall and hedges within the owner's side.

Chairman Reeder questioned if the pool can be pushed towards the rear yard.

John Owen, Tatum Brown located at 3838 Oak Lawn Suite 1520, stated by doing so, homeowner loses walkway access from the backyard. Therefore, an amendment to the proposed location leaves the homeowner entrapped.

Alan Vorwald, owner and applicant, mentioned by doing so the rear yard tree's roots would suffer and therefore, could not be preserved. He noted that is the reason the deep end of the proposed pool is located towards the entry.

Chairman Reeder questioned if responses in support were received. Mr. Pender confirmed seven (7) responses were dispersed to all members.

Chairman Reeder asked if there was anyone in attendance who would like to speak in favor.

With no one to speak, Chairman Reeder questioned if responses in opposition were received. Mr. Pender confirmed zero.

Chairman Reeder asked if there was anyone in attendance who would like to speak in opposition. With no one to speak, Chairman Reeder closed the public hearing and opened the Board for discussion.

Board Member Clark created a motion to approve the request. The motion failed and the request was denied.

MINUTES OF A MEETING OF THE BOARD OF ADJUSTMENT OF THE TOWN OF HIGHLAND PARK, TEXAS, HELD AT TOWN HALL, 4700 DREXEL DRIVE ON WEDNESDAY, SEPTEMBER 14, 2022, AT 8:30 A.M. TO CONSIDER A VARIANCE REQUEST FROM SECTION 8-501 OF THE TOWN'S ZONING ORDINANCE TO CONSTRUCT A PORTION OF A RESIDENCE INTO THE REQUIRED SIDE YARD SETBACK AT 4669 EDMONDSON AVENUE.

Mr. Pender presented the 4669 Edmondson Ave. case via PowerPoint presentation and mentioned this was previously denied in October of 2021. Photos of the current construction, application, existing survey, existing/proposed plan, elevation plan, slab/framing photos, two-hundred-foot buffer map, and summary of the request was explained and displayed.

Board Member Clark noted that the side yard encroachment is not only the garage, but also the attached living quarters located behind the garage. Mr. Pender confirmed.

Board Member Clark questioned where the confusion lied from a staff perspective. Mr. Pender explained when reading through the Ordinance language and after discussing it with the Town Attorney, a building permit was approved and issued for a five-foot (5') side yard setback. After further review and discussion, it was determined this interpretation was incorrect.

Board Member Clark questioned the time lapse from issuance to the realization of the error. The building permit was issued in January of 2022 and the notice to stop construction was in June of 2022.

With no further questions to staff, Chairman Reeder requested the applicant present their case.

Dallas Cothrum, 6700 Golf Dr., representing the owners, presented their case via PowerPoint presentation. He explained and displayed the owners hardships due to staff's error, more than 40 letters in support were received (HP and UP residents), the Texas Local Government Code, sixty-six (66) square-foot of the garage and living quarters is being requested of the twelve-thousand (12,000) square-foot lot, the owners agree to not add a second floor and no windows/openings within the side yard encroachment, the time lapse from issuance to the stop work order, staff emails, construction accommodations, property value determinations, University Park BOA case example regarding 3928 University Boulevard in December of 2020, Mr. Cothrum's property values throughout the years as reference, construction cost to date (\$130,000.00), the cost to demolish the entire structure and re-construct (280,000.00), staff approved plans, and photo of a neighbor with a recent new build that has less than an 8-foot side setback.

Chairman Reeder mentioned that in the original hearing for the property, the homeowners wished to expand the garage for more space between their vehicles. Mr. Cothrum confirmed,

however, they relied on staff's approval after being denied the original request.

Board Member McCulloch questioned if the affected next-door neighbor supports this request. Mr. Cothrum confirmed they are against.

Mr. Cothrum stated they are open to any accommodations to remedy this situation; example landscaping or planting of trees to the encroachment side.

Board Member Clark stated the opposed next door neighbor objects due to also being denied a side yard variance. Mr. Cothrum confirmed.

Mr. Cothrum mentioned he welcomes opposition responses as applicants going before the Board need to prove their case and prove any hardships. In this situation, all rules have been followed by the homeowners.

Chairman Reeder asked the homeowner if they wish to speak. Mr. James Bloomingdale, owner, and applicant thanked the Board for their time and service.

Chairman Reeder questioned if letters in support were received. Mr. Pender stated 40 letters were received, however not all were provided as agenda packets needed to be prepared prior to the meeting.

Chairman Reeder questioned if a map of residents near the subject site was prepared. Mr. Cothrum replied he has prepared a list, not a map. Mr. Pender answered he only has a map of the two-hundred-foot (200') buffer. The list was compared to the buffer map; a total of four (4) responses were received within the two-hundred-foot (200') buffer and nine (9) within proximity of the subject lot.

Chairman Reeder asked if there was anyone in attendance that would like to speak in favor.

Louisa Harwood, 3524 Hanover St., supports this request due to the elimination of street parking and appreciates the renovation of the historical home.

Nyla Nussbaumer, 5000 Seneca Dr., shared she too grew up in a home of the same architecture. She expressed that the loss falls on the owners and appreciates the renovation to preserve the original order of the home.

Peter Livingston, former HP resident, supports this request and hopes the Town will welcome them positively.

With no one else to speak, Chairman Reeder questioned if letters in opposition were received. Mr. Pender answered one (1) response in opposition was received from David Toomey at 4657 Edmondson and his response was read aloud.

Chairman Reeder asked if there was anyone in attendance who would like to speak in opposition.

Harold Montgomery, 4675 Edmondson Ave., stated he resides immediately adjacent to the East side of the subject site. Mr. Montgomery is opposed for the following reasons: the structure is too close to his property, which diminishes his property value, the variance is not necessary for the utility for the garage, the encroachment damages the character of the neighborhood and diminishes the neighborhood integrity. Mr. Montgomery clarified that he has no previous experience with requesting a variance before the Board. He stated he spoke in opposition at the previous October meeting, in which the Board denied the request. He is not sure how staff could misinterpret this section of the Town Ordinance. He provided the time lapse upon inquiry with Town staff in May of 2022 to current day. If approved, this will undermine the carefully constructed process and open the staff to harassment from builders and homeowners. He does not agree to accept letters in response that are not affected by the request. The time and dedication from all members are appreciated, however all Board decisions rendered must remain final. The surrounding neighbors, homeowners and Board Members are in an unfortunate situation, and he believes this should have not gone before the Board again. Mr. Montgomery suggested the Town staff take responsibility and compensate the homeowners. He thanked the Board for their service.

Board Member Clark expressed she's certain staff feels terrible about this issue; however, the owner could add a second floor over the encroachment area.

Mr. Montgomery stated this is one of the reasons he is against the request as the variance goes in perpetuity with the home for the next homeowner's ability to construct.

Board Member Clark confirmed this is not accurate. Mr. Montgomery stated this is what he was told by staff at the first meeting.

Casey Montgomery, 4675 Edmondson, expressed her frustration and confusion that no action was taken directly with the owners, rather the entire Town has been involved for 11 months now. The Montgomery's will have to live with a structure that is too close to their property or unhappy neighbors. In the future, she suggests staff assume responsibility for any errors made rather than pitting neighbors against neighbors.

Mr. Cothrum stated the request is for the encroachment only. He clarified if the existing

structure were to be demolished and built, current setbacks will be enforced. He understands the neighbor's frustration, however it does not compare to the owner's hardships. He believes staff did not intend to cause this and the Town's Zoning Ordinance is confusing and differs from other jurisdictions.

Board Member Clark questioned if the original structure also consisted of a side yard encroachment. Mr. Cothrum confirmed and stated the structure did not encroach as far as the current construction. Mrs. Montgomery clarified that it was a temporary shed.

Board Member McCulloch asked if there will be doors or opening in the encroachment area. Mr. Cothrum answered no.

Samuel Kincaid, 4648 Edmondson Ave., questioned if there was a willful disregard from the Board at the first meeting and why was no one notified of the re-interpretation by staff. He understands it's a small percentage of encroachment, however these decisions must be dealt with clear honesty. With his experience, if the answer is in a gray area, do not do it.

Barbara Kincaid, 4648 Edmondson Ave., opposes this request, however she understands there are previous cases like this one. If approved, she believes the hardship falls on the Montgomery's. She hopes the owners of the subject case can make the adjustments, move in, and become wonderful neighbors just like the Toomey's. She believes the balance of equity is in favor of the Montgomery's and supports their opposition.

With no one else to speak, Chairman Reeder closed the public hearing. Chairman Reeder asked if Town Council would like to speak on behalf of this case.

Matthew Boyle, Town Attorney, stated he owns this regrettable mistake that he, staff and his office made and deeply apologizes.

Chairman Reeder stated this Board is in the position to make a second decision for this same case. Therefore, he questioned if there is anything this Board should be thinking about from a Town Attorney perspective.

Mr. Boyle stated he has no additional wisdom for the general prerogative of this Board, thoughtful consideration and everything brought before today.

Board Member Clark mentioned she was not notified of the re-submittal after the first denial.

Mr. Pender clarified he had a discussion with Chairman Reeder only, not the entire Board.

Chairman Reeder understands the creation of this difficult situation; however, he reverts to the original request from the initial meeting, which is to widen the garage to allow for more space between the cars. He does not feel persuaded by this reason. He noted this is the first meeting with the newest members.

Board Member Hunsicker stated she remains unclear of how a building permit was submitted after being denied by the Board.

Mr. Pender explained after denial in October of 2021, the owners planned to request to go before the Board again in December. At that time, staff discussed a re-interpretation of the Zoning Ordinance with the Town Attorney and thus advised to submit a permit application for approval for a five-foot (5') side setback. The plans were approved, construction began, and the error was brought to staff's attention based on a neighbor complaint. A BOA request can return to the Board multiple times, unfortunately, construction has begun in this case.

Board Member Clark confirmed that plans along with staff's re-interpretation did not require to go before the Board. Mr. Pender confirmed.

Chairman Reeder agreed for Mr. Cothrum to speak.

Mr. Cothrum explained that the Board was not disregarded, it was handled administratively due to the side setback re-interpretation. The owners now have a hardship that the Town created. He believes the only remediation is to grant this request and suggests a condition for not allowing a second floor. They relied on the Town regarding the correct side yard setback, unfortunately, they were told 5'4". The major hardship is a \$300,000.00 cost for a less than 1% encroachment. He mentioned the UP case on University Blvd. was just as difficult. No maleficence was done on the homeowner's part.

With no further questions or comments, Chairman Reeder closed the public hearing and opened the Board for further discussion.

Due to a lack of a motion, the request was denied.

On a motion by Board Member Furst, seconded by Board Member Hunsicker, the Board of Adjustment voted unanimously to adjourn. There being no further business to come before the Board the meeting was adjourned at 10:26 AM.

APPROVED on this 19<sup>th</sup> day of December 2022.

BY:



Chuck Reeder  
Chairman

ATTEST:

Hugh Pender  
Director of Development Services