

Addendum A

Right to Appeal

Section 211.010 of the Texas Local Government Code (the "Texas Statute") states that a person aggrieved by a decision made by an administrative official may appeal that decision to the board of adjustments. Upon receiving a notice of appeal, the official shall immediately transit to the board all papers constituting the record of the action that is appealed.

City Zoning Ordinance

City of University Park Zoning Ordinance Article 4, Section 21-100(3)(a)i states: "In all single-family detached residential districts, a vertical surface in excess of twelve feet six inches (12'6") in height shall not exceed a length greater than forty-two percent (42%) of the total lot depth" (the "Zoning Ordinance").

The City has interpreted the term "total lot depth" as the legal depth of a lot. As discussed more fully below, this interpretation conflicts with the illustration contained in the Zoning Ordinance (see Exhibit A attached) which clearly shows the "total lot depth" as the actual depth of a lot starting from the sidewalk. Using the sidewalk as the beginning point for determining the "total lot depth" is also consistent with the requirement of Section 211.005(b) of the Texas Statute as well as the City's treatment of lots directly across the street from 2816 McFarlin Blvd. (the "McFarlin Lot").

Variance Requested

The legal depth of the McFarlin Lot is 127'6" with 53' 7" being the 42% calculation for the maximum side wall length. The McFarlin Lot is unique because there is 17' of transitional right-of-way between the sidewalk and the front property line. Due to the transitional right-of-way, the actual lot depth from the sidewalk is 144'6" with 60'8" being the 42% calculation for the maximum side wall length. The difference in the 42% calculation for the maximum side wall length between the actual lot depth and the legal lot depth is over 7 feet.

A variance is requested to allow only an additional four feet five inches (4'5") of maximum side wall length for a total of 58' (53'7" + 4'5"). This is over two feet less than the 60'8" maximum side wall length based on 42% of the actual lot depth. The requested variance will only apply to one side of the house due to the architectural design.

Texas Statute

The City staff has acknowledged that Texas state law is the authority for determining the granting of a variance due to a hardship; specifically, Section 211 of the Texas Statute.

Section 211.005(b) of the Texas Statute requires that zoning regulations be uniform for each class or kind of building in a district. The McFarlin Lot is located in a SF-4 residential zoning district.

Section 211.009(a)(3) of the Texas Statute governs variances based on hardships. This Section states: "The board of adjustment may authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit [intent] of the ordinance is observed and substantial justice is done." [emphasis added.]

The City staff, however, has stated: "A house meeting dimensional standards can be constructed on this lot, so no variance is warranted." This statement by staff is contrary to the provisions of Section 211.009(a)(3) of the Texas Statute.

The Hardship

The legal lot depth and the actual lot depth of almost all other lots in this SF-4 district in the City are either identical or are not materially different. The literal interpretation and application of this portion of the Zoning Ordinance will cause the new house on the McFarlin Lot to be built with a notched setback of the last 4'5" at the rear of the house just before the 40' rear yard setback. (See shaded area on attached schematic plans.) Other lots of this size in this SF-4 district do not bear this burden. Under the Texas Statute, this constitutes a "hardship".

Intent of Ordinance

The granting of this variance is not contrary to the public interest because the intent of the 42% requirement in this section of the Zoning Ordinance is to limit the scale and proportion of homes relative to the actual size of the lot to no more than 42% of the actual lot depth. The variance requested would allow a maximum side wall length of only 58' in length or 40.1% of the actual depth of the Lot.

Also, the Zoning Ordinance was intended to be calculated from the sidewalk. The illustrated drawings which are part of the Zoning Ordinance show the sidewalk and not the legal property line. Please review the drawing for Zoning Ordinance 21-100(3)(a). this illustration is consistent with other parts of the City Zoning Ordinances that use the sidewalk as the beginning point. See Section 21-100(3)(b)) the front yard of a lot includes the land all the way to the sidewalk and Section 21-100(4)(a) the setback for the building line is calculated from the sidewalk.

Application of the Texas Statute

Section 211.005(b) of the Texas Statute requires that zoning regulations be uniform for each class or kind of building in a district. While Section 21-100(3)(a)i of the City zoning ordinance appears on its face to apply uniformly to all houses in the SF-4 district, if it is interpreted to apply to the legal lot depth and not the actual lot depth in reality it does not. The zoning ordinance discriminates against lots that have a deep transitional right-of-way between the front of the property and the sidewalk. This discrimination is unjustified and is in direct opposition to the intent of the zoning ordinance. Compare the McFarlin Lot with lots directly across the street on Dyer, lots that are 146 feet deep. See Exhibit B attached. The Texas Statute requires that all lots on the same district be treated the same.

The "special condition" under Texas Statute Section 211.009(a)(3) is the 17' transitional right-of-way that, uncommon to almost all other lots in this SF-4 district of the City, is between the sidewalk and the front property line. The literal interpretation and application of this portion of the Zoning Ordinance results in a hardship because the property owner is not allowed to use the 17' of excess right-of-way in making the 42% calculation under the Zoning Ordinance. The legal lot depth and the actual lot depth of other lots in this SF-4 district in the City are either identical or are not materially different. The literal interpretation and application of this portion of the Zoning Ordinance will cause the house to be built with a notched setback of the last 4'5" at the rear of the house just before the 40' rear yard setback. (See shaded area on attached schematic plans.) Other lots of this size do not bear this burden.

The granting of this variance is not contrary to the public interest because the intent of the 42% requirement in this section of the Zoning Ordinance is to limit the scale and proportion of homes relative to the actual size of the lot to no more than 42% of the actual lot. The reason that the ordinance is a percentage is so that long and short lots can have a similar visible scale and proportion. That is, a larger lot can have a longer second floor side wall because with its large lot size the second floor side wall is visibly proportional to a smaller lot that has a shorter second floor side wall.

The variance requested would allow a side wall length of only 58' in length or 40.1% of the actual depth of the Lot. The legal depth of the lot is not the proper benchmark for this 42% calculation just as it is not the proper benchmark for determining the front yard or the building setback.

The variance is fair for the community and neighbors and the granting of the variance will not be contrary to substantial justice. In addition to being a fairly insignificant adjustment to the wall height, because of the variance the new house on the McFarlin Lot can be built without the "notch" and the house will conform to the other houses in the City on other similar size lots

Goals of the Community

The City has stated that the primary goals of the community in application of the zoning requirement are:

1. Neighborhood character;
2. "too much" house on a lot;
3. reduction of mass in new homes; and
4. rear yard privacy.

The new house on the McFarlin Lot meets or exceeds each of these goals. The house will be two stories with no livable heated space in the third floor attic. The anticipated heated square footage will be less than 3,800 sf. There are no second floor windows encroaching on the neighbor's rear yard privacy. Our intent is not to maximize square footage but to build a house that is easily manageable for two people.

The granting of the variance will enhance the neighborhood character because it will allow the house to have a symmetrical side wall and not have a four foot "notch" as would be built without the benefit of the variance.

Conclusion

As stated, the term "total lot depth" in the Zoning Ordinance should be interpreted to mean the actual lot depth. This is consistent with the illustrations in the Zoning Ordinance as well as Section 211.005(b) of the Texas Statute.

Alternatively, the variance requested should be granted since, as discussed above, it meets the requirements of Section 211.009(a)(3) of the Texas Statute. The variance is not contrary to public interest and, due to the special conditions resulting from the transitional right-of-way, a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship by causing the new house on the McFarlin Lot to be built with a notched setback. This variance allows for the spirit/intent of the Zoning Ordinance to be observed and substantial justice done.



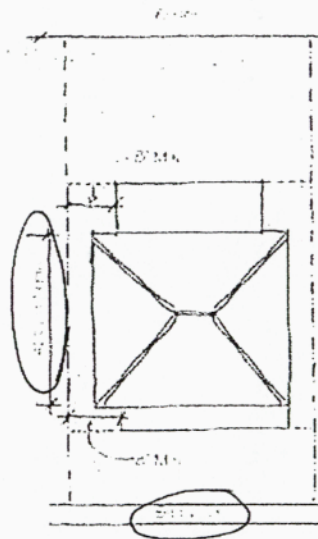
Exhibit A

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(3) Development Standards

(a) Building Walls

i. In all single-family detached residential districts, a vertical surface in excess of twelve feet six inches (12'6" forty-two percent (42%) of the total lot depth, measured from the front building line, except as provided herein. inches (12'6") in height shall not be closer than forty feet (40') to the rear property line, unless they are part of dormers, or other openings by (b)ii(F) below. In this section, "vertical wall surface" shall be the measurement from roof eave or soffit.



ii. The main structure may extend beyond the forty-two percent (42%) side wall length and the vertical wall surface if an additional setback of one foot (1') for each two feet (2') in vertical wall surface height above twelve feet six



Exhibit B 2

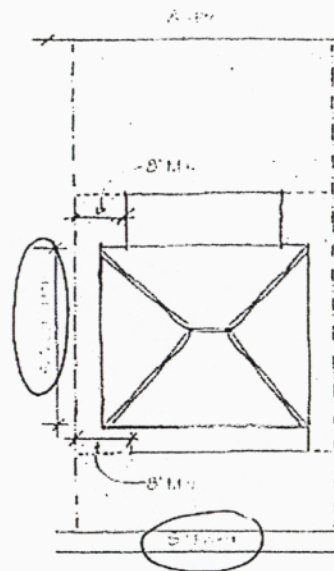
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iv. Where lots run through from one street to another and have double frontage, the required front yard shall line for accessory buildings has been established along one street by ordinance, approved plat, or by usage, in which shall be observed.

21-100 (3)

(b) Features Allowed in the Required Front Yard

Except as provided in the following subparagraphs, no accessory structure, portable storage container, or vehicle shall be placed or maintained in a required front yard in a residential district in the City.



i. A portable storage container may be placed in a required front yard in a residential district for a period of 90 days for storage for personal property from the residence to facilitate relocation and moving of household items to or from the residence.



Exhibit A 3

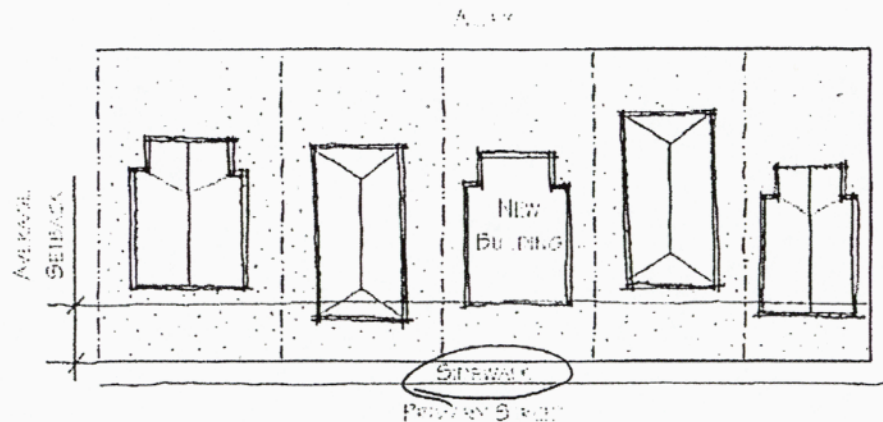
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21-100 (4)

(a) Front

- i. Where the frontage on one side of the street between two (2) intersecting public rights-of-way is divided by shall comply with the requirements of the most restrictive district for the entire frontage.
- ii. If buildings in a residential block have observed an average setback which is greater or less than the required average front yard of all buildings in the block shall establish the minimum required front yard; but in no case shall be below.

	SF-1	SF-2	SF-3	SF-4
Minimum Setback (ft.)	50	30	30	25

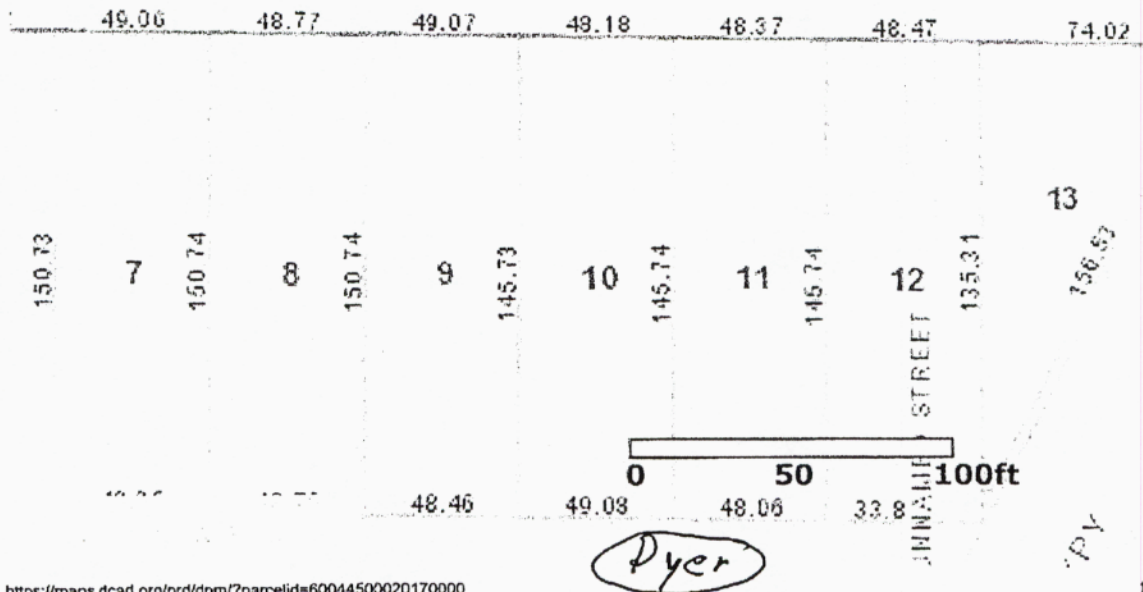
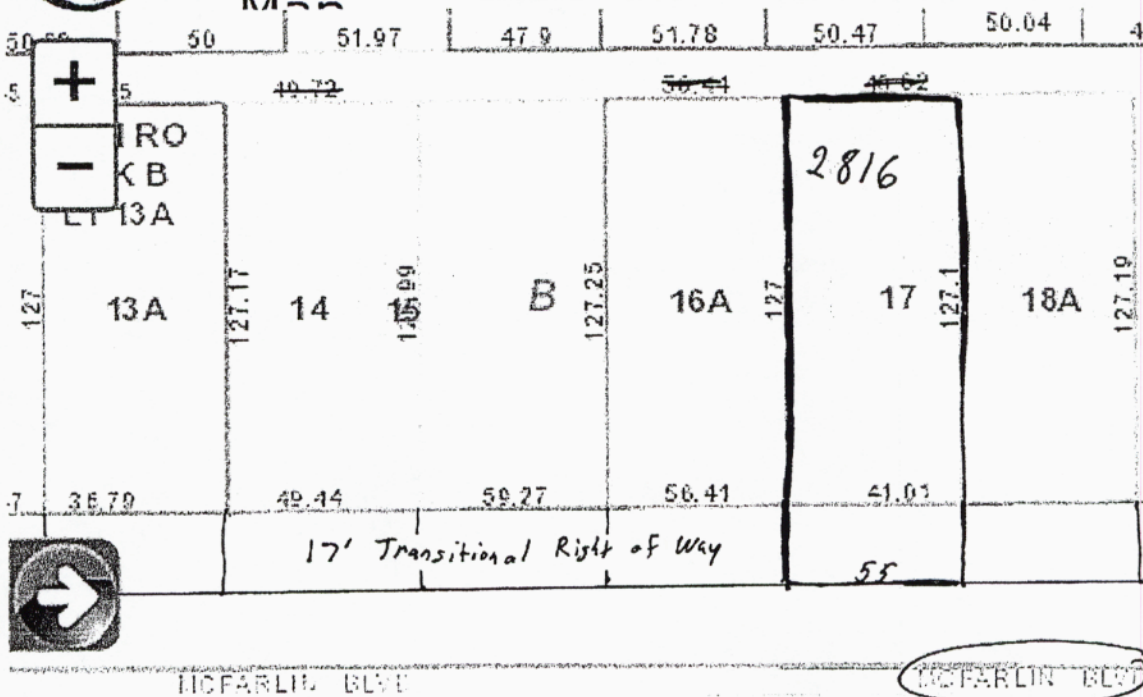


- iii. Any vacant lot or lot on which a structure is to be demolished or removed shall be assumed to have a set

Exhibit B-1

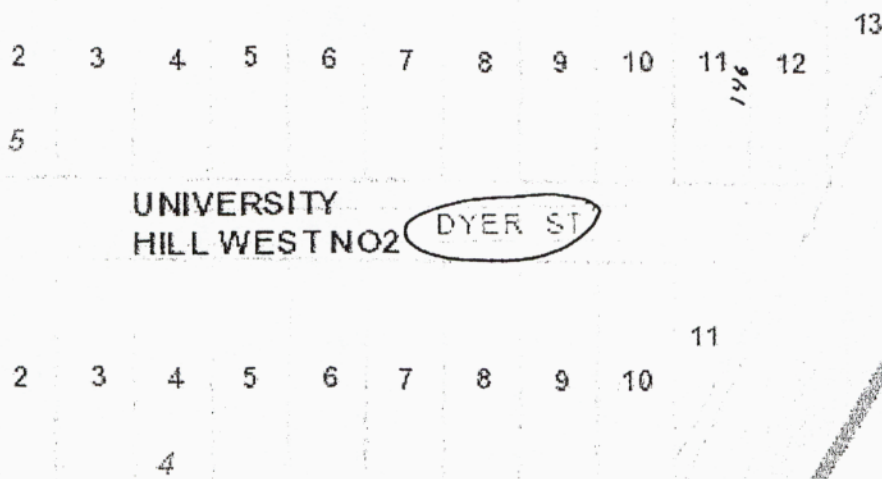
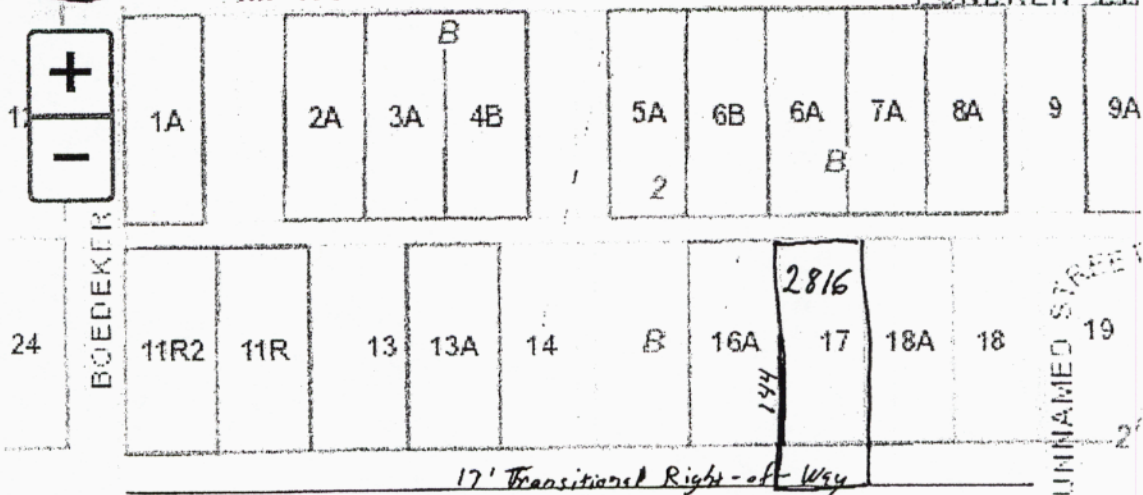


DCAD
Property
Map





DCAD
Property
Map





2816 McFarlin Boulevard

Being The East 15' of the Lot 16 and West 40' of Lot 17, in Block "B" of the Dan-Ro Addition to the City of University Park, Dallas County, Texas, according to the Map thereof recorded in Volume 5, Page 168, Map Records, Dallas County, Texas.

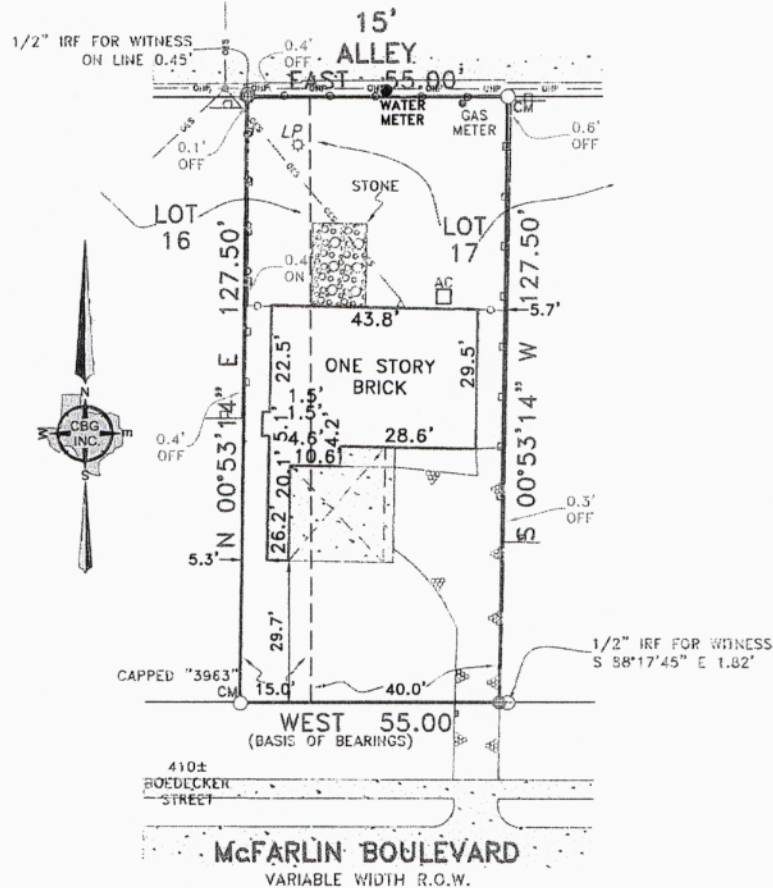


CHICAGO TITLE



LEGEND

- 1/2" ROD FOUND
- ⊗ 1/2" ROD SET
- 1" PIPE FOUND
- ⊗ "x" FOUND/SET
- ⊗ 5/8" ROD FOUND
- ◆ POINT FOR CORNER
- FENCE POST FOR CORNER
- CM CONTROLLING MONUMENT
- AC AIR CONDITIONER
- PE POOL EQUIPMENT
- TE TRANSFORMER PAD
- COLUMN
- POWER POLE
- ▲ UNDERGROUND ELECTRIC
- △ OVERHEAD ELECTRIC
- OHP— OVERHEAD ELECTRIC POWER
- OES— OVERHEAD ELECTRIC SERVICE
- CHAIN LINK
- WOOD FENCE 0.5' WIDE TYPICAL
- F— IRON FENCE
- X— BARBED WIRE
- DOUBLE SIDED WOOD FENCE
- E— EDGE OF ASPHALT
- G— EDGE OF GRAVEL
- CONCRETE
- COVERED AREA



EXCEPTIONS:

NOTES:

NOTE: BEARINGS, EASEMENTS AND BUILDING LINES ARE BY RECORDED PLAT UNLESS OTHERWISE NOTED.

FLOOD NOTE: According to the F.I.R.M. No. 48113C0335K, this property does lie in Zone X and DOES NOT lie within the 100 year flood zone.

This survey is made in conjunction with the information provided by Chicago Title. Use of this survey by any other parties and/or for other purposes shall be at user's own risk and any loss resulting from other use shall not be the responsibility of the undersigned. This is to certify that I have on this date made a careful and accurate survey on the ground of the subject property. The plat hereon is a correct and accurate representation of the property lines and dimensions as indicated; location and type of buildings are as shown; and EXCEPT AS SHOWN, there are no visible and apparent encroachments or protrusions on the ground.

Drawn By: ATA

Scale: 1" = 30'

Date: 05/16/17

Accepted by:

Purchaser

Date: _____

Purchaser

GF No.: CTCP87-

8000871700203-DL

Job No. 1709971



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