



MEMORANDUM

TO: Vice-Chairman Gratz and Board of Zoning Appeals Members
FROM: Kelly Machen, Zoning Administrator
DATE: March 20, 2023 meeting
RE: VAR 2022-01: Jackie Payne requests a variance to reduce the front and rear setbacks for 1405 Franklin Street, GPIN 7779-75-7651 (Formally part of 1403 Franklin Street: GPIN 7779-75-7651).

ISSUE

Should the Board of Zoning Appeals approve the variance request?

RECOMMENDATION

Approve the variance with the following conditions:

1. The location of the house for 1405 Franklin Street shall be in substantial accordance with the Final Site Design submitted on January 24, 2023, by Robert Kelsey.
2. The non-conforming use at 1403 Franklin Street shall be converted to a legal conforming use prior to the issuance of a building permit on 1405 Franklin Street.
3. A property survey showing the two separate lots at 1403 and 1405 Franklin shall be recorded prior to issuance of a grading plan or building permit on 1405 Franklin Street.
4. The curb cut in front of 1405 and 1407 Franklin Street will be reduced in general accordance with the Final Site Design submitted on January 24, 2023, by Robert Kelsey as modified if necessary to meet Public Works standards.

PLANNING COMMISSION

The Planning Commission reviewed the requested variance at their March 8, 2023 meeting. During the meeting they discussed the submitted public comments, the Comprehensive Plan, and if Planning Commission should make a recommendation to the Board of Zoning Appeals. On a 5 to 2 vote, Planning Commission recommended that should the Board of Zoning Appeals find the requested variance is appropriate, that the Board of Zoning Appeals favorably consider the requested variance because it supports the Comprehensive Plan's goals of infill development and removal of nonconforming uses. The two dissenting votes both noted they did not feel it was appropriate for Planning Commission to make a recommendation.

PROPERTY DESCRIPTION

The property is zoned Residential-4 (R-4) as are all adjacent properties. The R-4 District is intended to provide single-family detached dwellings at densities up to four units per acres. On March 3, 2022, a letter was issued by the Development Administrator concurring with a legal option submitted by the property owner that the lot known as 1403 Franklin Street is comprised of two separate lots (parcels 1 and 2) based on the Deed/Book page 102/237 (included in

attached application). 1405 Franklin Street (parcel 1) is the subject of the variance request and currently contains required parking for a non-residential use at 1403 Franklin Street.

1403 Franklin Street contains an existing one story structure currently utilized for non-conforming commercial use (yoga studio). The property owner intends to expand 1403 Franklin Street and convert it into a single-family detached home. A variance is not required for the proposed expansion of 1403 Franklin Street. However, the conversion into a single-family detached home will remove the non-conforming status of the property and the need to maintain the five parking spaces on 1405 Franklin Street. Conversion of 1403 Franklin Street into a single-family detached home will need to be completed prior to issuance of building permits for 1405 Franklin Street.

In the R-4 District, lots of record that were established before 1984 are required to have their front yard setbacks established using the median front setback of all homes on the same block face. This keeps the character of the neighborhood intact by ensuring that the location of the front of the house is consistent with its neighbors. On lots smaller than 7,500 square feet, infill calculations may be used to reduce side yard setbacks if the calculation comes back smaller than the conventional setback. The infill setback calculation for this property is attached.

1405 Franklin Street is approximately 2,113 square feet and contains 46 feet of street frontage. Conventional developments in the R-4 District lot have a minimum lot size of 7,500 square feet and a minimum lot width of 60 feet wide. The lot is therefore considered legal non-conforming. Per § 72-56 of the Unified Development Ordinance (UDO) Non-conforming lots may be used provided that:

- *The proposed use is a permitted use under this chapter.*
- *Requirements for minimum yard setbacks and maximum height are met.*
- *Wherever possible, the consolidation of adjacent nonconforming lots is encouraged to meet the minimum lot size requirements.*
- *If minimum yard setbacks and maximum height requirements cannot be met, variances may be available in accordance with this chapter.*

There are no existing special exceptions, special use permits, or rezoning proffers associated with this property. There are no known current zoning violations on the site.



VARIANCE REQUEST

The applicant wishes to build a single-family detached home on 1405 Franklin Street with a shared driveway between 1405 and 1403 Franklin Street. The side and rear setbacks are 6 feet and 24 feet respectively per Code § 72-31.3B of the UDO. The front setback is based on an infill setback calculation as required under Code § 72-31.3D(1):

D. Additional regulations for lots of record in developed areas where front and side yard setback geometry has already been established by existing residential dwellings and lots created by the administrative subdivision process on or after January 28, 2020:

- 1) *Front setbacks **shall** be established using the average front setback calculated using the rules in § 72-82.4B(2). The average front setback shall be the maximum and minimum front setback for the lot.*

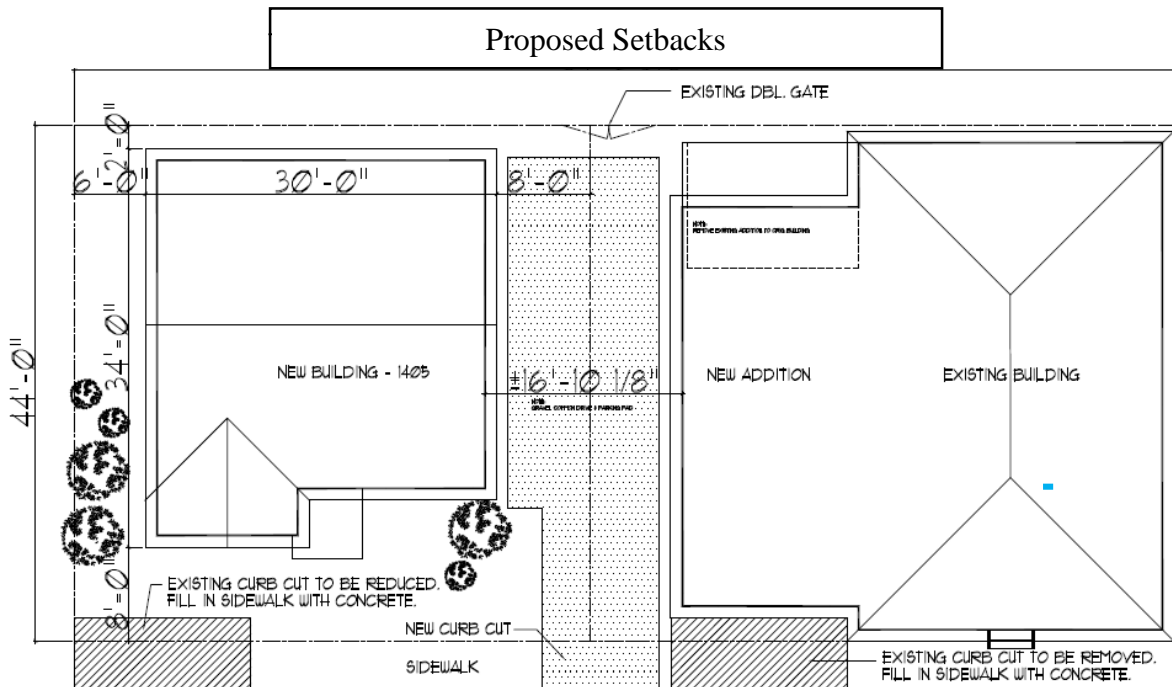
Per Code § 72-82.4B(2), "The dimensions of existing yards shall be determined through the best information reasonably available, including, in order, surveys of record, on-site measurements, or the 2010 tax maps. The median is the type of average that shall be applied. The average setback calculated by applying the median may be varied by plus or minus 10%."

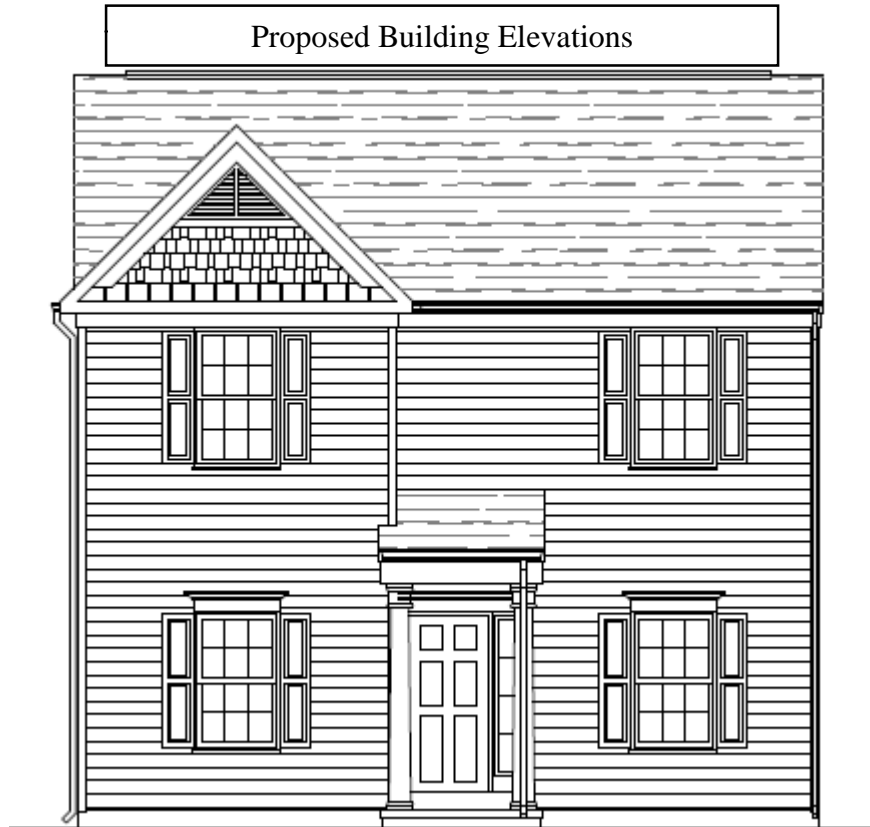
The infill calculation was based on the median front yard of the existing principal buildings along the same block face as 1405 Franklin Street, using the 2010 City tax maps. An infill calculation for the property determined the median front setback of 22 feet, with a permitted average of 19.8 to 24.2 feet. The structure is proposed to be 8 feet from the front lot line, with a 36 square foot covered stoop 6 feet from the front property line. The stoop is allowed to encroach 5 feet into any setback, but no nearer to any lot line than 3 feet per Code § 72-82.4(e).

The standard required rear setback in the R-4 district is 24 feet. The proposed rear setback is 2 feet, for a variance of 22 feet. Side yard setbacks are shown as meeting or exceeding the minimum 6 feet required. The back of the dwelling would not have (nor does it show) any opening, per building code, since it would be three feet or less from a rear property line. The maximum building height is 27 feet.

	Code Requires	Applicant Proposes	Variance
Front setback	22 feet (infill calculation) 10% = 19.8 to 24.2 feet	8 feet (house)	11.8 feet (based on 10%)
Front Stoop	13	6 feet (stoop)	7 feet
Rear	24	2 feet	22feet
Side	6	6 and 8 feet	Requirement met

Per Code § 72-82.4(e), "Covered and uncovered porches and stoops. Covered and uncovered porches and stoops, including stairs, may project into a required side, rear or front yard setback not more than five feet, but not nearer to any lot line than a distance of three feet, except that front porches to be constructed in the R-4, R-8, and C-T Districts may use an average front setback as is found on the adjacent lots on the same block face."





These pictures show the location around 1405 Franklin Street and how the fronts align.







VARIANCE ANALYSIS

City Code § 72-22.8 states that in order for a variance to be approved, the BZA must make certain findings in accordance with the Code of Virginia. The Code of Virginia states that the burden of proof is on the Applicant to prove by a preponderance of the evidence that the application meets the definition of a variance found in § 15.2-2201 and the criteria stipulated in § 15.2-2309:

A. § 15.2-2201 defines a Variance in part as “a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure...”

The request meets this criterion as a reasonable deviation. Since January 2016, the infill calculation standard has been used numerous residential lot grading plans in various areas of the city. The standard is meant to protect the character of existing neighborhoods. However, the lots on the same block as 1405 Franklin Street are generally much deeper than the subject lot, allowing for more room to meet the setbacks. The shallowness of 1405 Franklin Street prevents the construction of any house without a variance of the front and rear yard setbacks. The front and rear setbacks allow for 2.4 inches of buildable lot depth. The attached infill sheet shows the offset of each home on the north side of Franklin Street.

There are lots in the area, similar in size and dimension to 1405 Franklin Street, that appear to have modifications to the setbacks. In considering these lots and the non-conforming status of 1405 Franklin Street, the requested variance is considered a reasonable deviation.

Address	Front Setback	Rear Setback	Lot Size
911 Monument Ave	7	1.4	2,464
1405 Sunken Rd	10	4	2,640
1403 Franklin St	1.8	1.6	2,033
1420 Franklin St	22	2	2,842
1428 Franklin St	22	2	3,162
Median	10	2	2,741
Requested Setback	8	2	2,113

Under the Code of Virginia § 15.2-2309.2 a variance shall be granted if it meets one of three tests. *"Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would:"*

1. Unreasonably restrict the utilization of the property, or

The request meets this criterion. The use of the property is severely impacted due to the size of the lot. The lot is 72% less than the required size (7,500 sq. ft.). Any proposed use would likely have challenges meeting the setback requirements for the R-4 District.

2. Alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or

The request does not meet this criterion. The property does not have any topographical challenges. The improvements on the site lend themselves to meeting the preferred option under Code § 72-56, which would be to consolidate the lot with the adjacent nonconforming lot, 1403 Franklin Street. Both 1403 and 1405 Franklin Street are owned by the applicant of the variance and have been historically used as one property.

3. Alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability.

The application's justification does not include a request for the variance to alleviate hardship for a person with a disability.

In addition to one of the three tests above, no variance shall be authorized by the Board of Zoning Appeals unless it is determined that the request meets a second set of five criteria, all of which must be met in order to approve a Variance request. The § 15.2-2309 criteria are similar to criteria established under the definition of a variance found in § 15.2-2201. Additional definitional criteria from § 15.2-2201 have been included as appropriate.

1. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.

The request meets this criterion. No hardship was created by the applicant.

- 2. § 15.2-2309 states that, “the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area” and § 15.2-2201 states that, “the character of the district will not be changed by the granting of the variance.”**

The request meets this criterion. The proposed variance maintains at least a portion of the front setback found in the neighborhood. The conversion of 1403 Franklin Street to a conforming use would benefit the neighborhood and would be required to remove the existing parking spaces on 1405 Franklin Street.

The standard off-street parking requirement for a single-family detached dwelling is one space per dwelling unit. This property is exempt from this requirement due to the age of the lot, however, the applicant proposes to provide at least two off-street parking spaces, for the use of 1403 and 1405 Franklin Street.

Additionally, to maximize on street parking and reduce the impact of on street parking demand created by the new dwelling, the applicant has proposed to reduce the existing 21-foot curb cut in front of 1405/1407 Franklin Street to serve only 1407 Franklin Street. The Public Works standard for this type of residential curb cut is 12 feet.

- 3. § 15.2-2309.2 states that, “the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance” and § 15.2-2201 states that, “the hardship will not be shared generally by other properties;”**

The request meets this criterion. The allowance of a reduction in front/side yard setbacks for infill development within the UDO was adopted because of the number of non-conforming lots within the city. However, the property in question unique in that it is smaller than the lots in the immediate vicinity. The requested variance is comparable to similarly sized lots in the neighborhood and is therefore considered a reasonable reduction in setbacks.

- 4. “the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.”**

The request meets this criterion. The R-4 District allows single-family detached dwellings by-right.

- 5. “the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.”**

The request meets this criterion. A Special Use Permit, Special Exception, or Administrative Modification cannot reduce setbacks beyond what is already permitted under Codes § 73-31.3D(1) and § 72-82.4B(2) [Infill].

PUBLIC COMMENT

Two public comments have been received and are attached. Both comments are about maintaining access through 1405/1403 Franklin Street to an existing gate on the adjacent lot. The comments were provided by the current and previous owner of 909 Monument Street. The applicant has included the gate into the attached plans for reference and has noted that this is a civil matter that they have addressed. The requested variance is for a reduction in setbacks for the front and rear yards and not the side yard, where the gate is located.

CONCLUSION

The proposal is for a variance to the front and rear yard setbacks to allow for the construction of a single-family detached home. The property is considered non-conforming to lot size and width. The requested setbacks are reasonable modifications in keeping with nearby non-conforming lots, the apartment building across the street (913 Monument Street), and help preserve a portion of the front setback along Franklin Street.

In granting a variance, the BZA may impose such conditions regarding a proposed structure's location, character, and other features or use as it may deem necessary in the public interest. Staff is recommending approval of the requested variance subject to the conditions noted below. These conditions may be modified as recommended by the City Attorney.

1. The location of the house for 1405 Franklin Street shall be in substantial accordance with the Final Site Design submitted on January 24, 2023, by Robert Kelsey.
2. The non-conforming use at 1403 Franklin Street shall be converted to a legal conforming use prior to the issuance of a building permit on 1405 Franklin Street.
3. A property survey showing the two separate lots at 1403 and 1405 Franklin shall be recorded prior to issuance of a grading plan or building permit on 1405 Franklin Street.
4. The curb cut in front of 1405 and 1407 Franklin Street will be reduced in general accordance with the Final Site Design submitted on January 24, 2023, by Robert Kelsey as modified if necessary to meet Public Works standards.

These conditions will ensure that the development is in accordance with the proposed plans and that the existing non-conforming use and curb cut are brought into compliance with City Code.

ATTACHMENTS

- A. Record of Decision
- B. Application
- C. Public Comments
- D. Infill Calculation