

**CITY OF AUSTIN
Board of Adjustment
Decision Sheet**

DATE: Monday September 14, 2020

CASE NUMBER: C15-2020-0042

☐ Y ☐ Brooke Bailey
☐ Y ☐ Jessica Cohen
☐ Y ☐ Ada Corral
☐ Y ☐ Melissa Hawthorne
☐ Y ☐ William Hodge
☐ Y ☐ Don Leighton-Burwell
☐ Y ☐ Rahm McDaniel
☐ Y ☐ Darryl Pruet
☐ Y ☐ Veronica Rivera
☐ Y ☐ Yasmine Smith
☐ Y ☐ Michael Von Ohlen
☐ - ☐ Kelly Blume (Alternate)
☐ - ☐ Martha Gonzalez (Alternate)

Item C-2

APPLICANT: Harmony Grogan

OWNER: Jessie Patton-Levine

ADDRESS: 2202 49TH ST

VARIANCE REQUESTED: The applicant is requesting a variance(s) from the Land Development Code, Section 25-2-947 (*Nonconforming Use Regulation Groups*) (B) (2) to increase the improvement value from 20% of \$69,983 (allowed) to \$150,000 (requested) in order to complete a remodel and addition to an existing single-family residence in a "SF-3-NP" Single-Family Residence zoning district

Note: Per LDC for a Nonconforming Use - A person may improve, enlarge, or structurally alter a structure if the cost does not exceed 20 percent of the value of the structure before the improvement.

Per applicant: The improvements allowed, or 20% of the value equals \$13,996. Per code, we are able to make improvements of \$13,996 and we are asking to make improvements of \$150,000.

BOARD'S DECISION: The public hearing was closed by Chair Don Leighton-Burwell, Board Member Michael Von Ohlen motions to Postpone to October 12, 2020, Board Member Melissa Hawthorne seconds on an 11-0 vote; **POSTPONED TO OCTOBER 12, 2020.**

FINDING:

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:

2. (a) The hardship for which the variance is requested is unique to the property in that:

(b) The hardship is not general to the area in which the property is located because:
3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:



Elaine Ramirez
Executive Liaison

Diana Ramirez for
Don Leighton-Burwell
Chairman



CITY OF AUSTIN

Development Services Department

One Texas Center | Phone: 512.978.4000

505 Barton Springs Road, Austin, Texas 78704

Board of Adjustment General/Parking Variance Application

WARNING: Filing of this appeal stops all affected construction activity.

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. ***If more space is required, please complete Section 6 as needed.*** All information is required (if applicable).

For Office Use Only

Case # _____ ROW # _____ Tax # _____

Section 1: Applicant Statement

Street Address: 2202 W 49th Street, Austin, TX 78756

Subdivision Legal Description:

LOT 1, ILENE MEIER SUBDIVISION

Lot(s): _____ Block(s): _____

Outlot: _____ Division: _____

Zoning District: SF-3

I/We Harmony Grogan, AIA on behalf of myself/ourselves as
authorized agent for Jessie Patton-Levine affirm that on
Month September, Day 16, Year 2020, hereby apply for a hearing before the
Board of Adjustment for consideration to (select appropriate option below):

☐ Erect ☐ Attach ☐ Complete ☒ Remodel ☐ Maintain ☐ Other: Addition

Type of Structure: Single family residence

Portion of the City of Austin Land Development Code applicant is seeking a variance from:

I am requesting a variance from the LDC 25-2-947(B)(2) Nonconforming Use for SF-3 residential property "a person may improve a structure if costs do not exceed 20% of the value of the structure before improvements" (per TCAD \$13,996) to \$150,000 to allow for an interior remodel and addition of 270 SF.

Section 2: Variance Findings

The Board must determine the existence of, sufficiency of, and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional supporting documents.

NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

I contend that my entitlement to the requested variance is based on the following findings:

Reasonable Use

The zoning regulations applicable to the property do not allow for a reasonable use because:

The 5,025 SF lot was subdivided in 1960 and is therefore a substandard lot and a nonconforming use. Per LDC 25-2-947(B)(2), the existing 942 SF residence can only make improvements with costs capped at 20% of the value of the structure. TCAD lists the value as \$69,983, limiting any improvement costs beyond minimum health and safety measures to \$13,996. This practically eliminates any remodels or additions and eliminates reasonable use of the single family lot. Small lot amensty does not apply to this residence/neighborhood.

Hardship

a) The hardship for which the variance is requested is unique to the property in that:

No improvements valued over \$13,996 are allowed to this residence built in 1947. That means, no improvements are allowed—no new windows, no interior remodels of any substance, no new plumbing, etc. This hardship only results because the lot is substandard as it was subdivided in 1960 and is less than 5,750 SF. Only because the lot was officially subdivided years after the construction of the home, do the homeowners have this unreasonable restraint.

b) The hardship is not general to the area in which the property is located because:

The property's small size is unique to the neighborhood. Within 500' of the property, all SF-3 lots are larger than 5,750 SF and these homes are therefore not impacted by this unreasonable limitation. In fact, the smallest lot within 500' is 5,973 SF.

Area Character

The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

Any improvements will be within setbacks and will additionally conform to all impervious coverage and FAR limitations. The proposed remodel and 270 SF one story addition will match the existing character of the home and neighborhood in size and proportion. The structure will remain a single family residence.

Parking (additional criteria for parking variances only)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed in the City of Austin Land Development Code Chapter 25-6, Appendix A with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specific regulation because:

2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

Section 3: Applicant Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Applicant Signature: Harmony Grogan Digitally signed by Harmony Grogan
Date: 2020.09.16 10:37:54 -05'00' Date: 09/16/2020

Applicant Name (typed or printed): Harmony Grogan, AIA

Applicant Mailing Address: 1608 Treadwell Street

City: Austin State: TX Zip: 78704

Phone (will be public information): (512) 507-4096

Email (optional – will be public information): [REDACTED]

Section 4: Owner Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Owner Signature: Jessie Patton-Levine Digitally signed by Jessie Patton-Levine
Date: 2020.09.16 10:27:18 -05'00' Date: 09/16/2020

Owner Name (typed or printed): Jessie Patton-Levine

Owner Mailing Address: 2202 W 49th St

City: Austin State: TX Zip: 78756

Phone (will be public information): (512) 736-9781

Email (optional – will be public information): [REDACTED]

Section 5: Agent Information

Agent Name: _____

Agent Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone (will be public information): _____

Email (optional – will be public information): _____

Section 6: Additional Space (if applicable)

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

Subject: RE: 2202 W 49th Street- residential question for BOA
Date: Wednesday, September 16, 2020 at 1:47:57 PM Central Daylight Time
From: Richards, John
To: Harmony Grogan
CC: Ramirez, Elaine
Attachments: image001.png

Alyssa is correct on both issues. Assuming the house is in the original footprint, and from what I can tell that is the case, the house is legal non-complying and does not need a variance to encroach into the street side setback as it was built prior to our current land development code. The 1984 aerial we have looks like the footprint is in the same configuration.

She is also correct about the driveways. The City allows non-complying driveways to be maintained if left unaltered.

The additions to the house do not require the driveway be brought into compliance, nor should you have to seek a variance for a house residing in a setback that was built pre-1986.

I'm not sure if that's much help but I do not know why the Board would be asking for the additional variance for things we would not reject for, nor send you to the board for a variance.

John Richards

Planner Senior, Residential Review

City of Austin Development Services Department
6310 Wilhelmina Delco Dr, Austin, Texas 78752
Office: 512-974-9155



Building a Better and Safer Austin Together

Please contact my direct supervisor with any kudos or concerns at emily.layton@austintexas.gov

PER CITY ORDINANCE: All individuals scheduling or accepting a meeting invitation with a City Official are requested to provide responses to the questions at the following link: [DSD Visitor Log](#).

Please note that all information provided is subject to public disclosure via DSD's open data portal. For more information please visit: [City of Austin Ordinance 2016-0922-005](#) | [City Clerk's website](#) | [City Clerk's FAQ's](#)

From: Harmony Grogan [REDACTED]
Sent: Wednesday, September 16, 2020 9:34 AM
To: Richards, John <John.Richards@austintexas.gov>
Cc: Ramirez, Elaine <Elaine.Ramirez@austintexas.gov>
Subject: 2202 W 49th Street- residential question for BOA

*** External Email - Exercise Caution ***

Hello John,

Elaine Ramirez suggested I contact you regarding a proposed project for the single family residence at 2202 West 49th Street. I've previously met with Alyssa Mayfield during a PPR and I was told we would need to seek a variance for the property since the lot is substandard. The lot is only 5,025 SF and was subdivided after 1946 (1960). Per LDC-2-947(B)(2), we can only make improvements of 20% of the value, limiting any remodels or additions to 14k.

The case was on the BOA agenda early this week. The board postponed the case because they felt we needed a second variance since the existing residence sits outside of the street yard setback along 49th Street. They asked me to confirm this with residential staff. I'm confused by this because this house was built in 1947 and the structure is non-complying. It's always been my understanding that you can make improvements to a non-complying structure as long as you are not increasing the non-compliance. We are only proposing additions within the setbacks.

The Board also mentioned that they felt the driveways must be brought up to current code. Alyssa reviewed the driveways with me and I was told we did not have to adjust these since we were adding less than 50% of the current SF.

Can you provide any clarity on this? I've attached the current and proposed site plans. Please let me know if you need any additional information.

I very much appreciate your time,

Harmony Grogan, AIA
Pluck Architecture
512-507-4096

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

Proposed improvements:

- ✓ Meet FAR, impervious, & bldg coverage
- ✓ Within all setbacks
- ✓ Do not require additional variances for driveways or the non-complying structure

**BUT
B/C**

**Officially
subdivided in
1960**
(i.e. after 1946)

**Lot is
5,052 SF**
(smaller than 5,750 SF)

**Appraised Structure
Value per TCAD is
\$69,983**

**LDC §
25-2-947(B)(2)**

**IMPROVEMENTS
CAPPED AT**

\$13,996
(20% of appraisal)

No additions,
no energy efficient
windows,
no updated siding,
no kitchen/ bath
renovations

=**HARDSHIP****≠****REASONABLE
USE**

September 24, 2020

Dear City of Austin Board of Adjustments,

I'm seeking a variance from the LDC 25-2-947(8)(2) Nonconforming Use for a SF-3 residential property and asking to improve the structure with an interior remodel and addition of 270 SF, valued at up to \$150,000.

Per current code, no improvements valued over \$13,996 are allowed to this residence built in 1947. This hardship only results because the lot is substandard as it was subdivided in 1960 and is less than 5,750 SF.

The existing residence measures only 942 SF and needs renovation. All proposed improvements will be within setbacks, conform to FAR and impervious calculations, and will match the existing character of the home and neighborhood in size and proportion. The only impediment to this minimal renovation and addition is the seemingly arbitrary dollar limitations imposed by LDC 25-2-947(8)(2), which was only triggered by the lot being subdivided 60 years ago, instead of 74 years ago.

Without a variance, the homeowners are barred from doing any renovation over \$13,996, which in my experience prohibits any improvements to their home.

Thank you for your consideration.

Sincerely,



Harmony Grogan, AIA
Principal, Pluck Architecture

D-1/11

Subject: Re: Follow-up on 2202 W 49th St renovation plans
Date: Thursday, August 27, 2020 at 11:17:12 AM Central Daylight Time
From: T Holmes
To: Brian Diggs
CC: Harmony Grogan, JPL, Jeff Archer, Carl Reynolds

Good Morning Brian and Harmony,

Sorry for the delay. Things have been quite hectic lately.

The RNA does not oppose your request for a variance. The RNA does not usually take a position on variance requests of this type whose effect is limited to a small part of the neighborhood. If we are contacted by the neighbors after the city provides notice, we will let you know and see if we can work toward a solution. The city staff and Board of Adjustment generally understand that a NA is not in a position to take sides on a small issue like a setback. We are understanding of your dilemma. You are of course welcome to state that you have consulted the RNA and that we have elected to remain neutral/unopposed at this time. That is generally a good thing with the city.

Enjoy your day!

Teresa Holmes & Jeff Archer (RNA Co-President)

cc Carl Reynolds (RNA Co-President)