

BOARD OF ADJUSTMENT STAFF REPORT

Appeal of an Administrative Decision,
Front Yard Set Back, 420-07-215 (Bazail
Residence) located at 1137 South Douglas Street
November 19, 2007



Planning and Zoning
Division
Department of Community
Development

Applicant: Fred and Janet
Lowe

Staff: Nole Walkingshaw
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535-7128

Tax ID: 16-08-480-003

Current Zone: R-1/5,000
Single Family Residential
District

Master Plan Designation:

Council District: Council
Person; Jill Remington Love
Council District 5

Acres: 0.23 Acres

Current Use: Single Family
Residential

**Applicable Land Use
Regulations:**

- 21A.24.040 E
Minimum Yard
Requirements
- 21A.12.010 Purpose
Statement for
Administrative
Interpretations

Attachments:

- A. Site Demolition Plan
- B. Application and
attached narrative
- C. Public Comments

Request

An appeal of an Administrative Decision on calculating an average front yard setback of the block face. The appellant is stating that the Planning Staff should have considered applying the existing dwelling when calculating the average front yard setback for the property located at 1137 Douglas Street.

Background

Salt Lake City Code 21A.24.040.E requires that the minimum depth of the front yard for all principal buildings shall be equal to the average of the front yards of the existing buildings within the block face. The principle question for this appeal is should a structure which will be or has been removed by demolition prior to development of the new structure be taken into consideration as an “existing” building for the purpose of calculating the required front yard setback.

Staff made their determination based on the following section of the City Zoning Ordinance:

Section 21A.24.040.E Minimum Yard Requirements:

1. **Front Yard:** The minimum depth of the front yard for all principal buildings shall be equal to the average of the front yards of existing buildings within the block face. Where there are no existing buildings within the block face, the minimum depth shall be twenty feet (20'). Where the minimum front yard is specified in the recorded subdivision plat, the requirement specified on the plat shall prevail. For buildings legally existing on April 12, 1995, the required front yard shall be no greater than the established setback line of the building.

PUBLIC NOTICE

Notice of the variance was mailed to all property owners within eighty-five (85') feet of the subject property at least fourteen (14) days prior to the scheduled Board of Adjustment public hearing. The subject property was posted by the city with a notice of public hearing sign on November 9, 2007 in advance of the public hearing. Community Council review is

not required by city code for an appeal of Administrative Decision. Staff has received public comments and they are presented on page 2 of this report.

RECOMMEND MOTIONS:

Potential actions by the Board of Adjustment: The board may reverse or affirm, wholly or in part, or may modify the administrative decision.

Affirm: In the event of a demolition and rebuild, the structure to be removed *is not* taken into consideration as an existing structure, for the purpose of calculating the required front yard setback. This ensures that new construction will be built to an average set back of the block face which is consistent with the remaining dwellings along the street.

Reverse: In the event of a tear down and rebuild, the structure to be removed *is* taken into consideration as an existing structure, for the purpose of calculating the required front yard set back. This ensures that the new structure will be built to an average set back which is more consistent with the traditional block face average.

Public Comments

The City has received comments both in support and against Staff’s interpretation (Exhibit C). Generally speaking, the comments against this interpretation state that the interpretation led to the construction of a larger home than would be allowed if it were set back further and the additional set back would have mitigated the impacts of the “massive” structure. The comments in support of the development state that the new structure will be a substantial improvement over the structure it is replacing and the value of the homes in the area will be benefited. The comments that the previous setback of 85 feet was uncharacteristic of the neighborhood and making this house equal to the average of all other houses on the block seems like a realistic approach.

Comments that Staff have received regarding the new dwelling are as follows:

- Grade change violations – Staff has determined that there have been grade changes that have occurred within the front yard setback area. These grade changes during the construction of the new single family dwelling exceeded the two foot grade and the city issued a stop work order. Since the stop work order, the property owner corrected this issue and has changed the grade not to exceed two feet.
- Building height – Staff have received comments that the dwelling under construction is over height. A survey was conducted by a licensed engineer and the survey indicates that the dwelling height is under the 28 foot height requirement measured from existing grade to the ridgeline of the roof.
- Dwelling size – Staff have received comments that the house size is too big. The finished square footage is less than 5,400 square feet. As approved, the single family dwelling meets the yard area requirements.
- Property dispute – Based on survey, the abutting property has existing railroad ties that encroach onto the subject property. This dispute will need to be addressed between the respective owners’ s.

Staff received a letter sent to the Office of the Property Rights Ombudsman from Fabian & Clendenin Law Firm, discussing what the property owners have been going through (Exhibit C)

Analysis

Salt Lake City Zoning Ordinance, Section 21A.12.010 Purpose Statement: Administrative Interpretations:

The interpretation authority established by this Chapter is intended to recognize that the provisions of this Title, though detailed and extensive, cannot, as a practical matter, address every specific situation to which these provisions may have to be applied. Many of these situations can be resolved or clarified by interpreting the specific provisions of this Title in light of the general and specific purposes for which those provisions were enacted. This interpretation authority is administrative rather than legislative. It is intended only to allow authoritative application of the provisions of this Title to specific cases. It is not intended to add to or change the essential content of this Title. (Ord. 26-95 § 2(6-1), 1995)

Project History

The property owner, Mr. Bazail, 1137 South Douglas Street submitted plans and a demolition request to the city May 16, 2007. The plans included a tear down and removal of all structures on the site and the construction of a new single family dwelling and accessory garage. Prior to demolition, the site included a single family dwelling (85’ from front property line) and an accessory building (3’ from front property line). The following is a list of front yard setbacks for the Douglas Street block face. The set back of the previous structures have been included for the purpose of the discussion of averaging: Average “A” and Average “B”. The list of front yard setbacks for the Douglas Street block face not including the setback of the prior structures is shown as Average “C”.

Average “A” (includes set back of prior dwelling, based on submitted list of setbacks, see attachment A)

- 1121 Douglas Street: 34’
- 1137 Douglas Street: 85’
- 1143 Douglas Street: 22’
- 1149 Douglas Street: 20’ 6”
- 1155 Douglas Street: 30’ 10”
- 1165 Douglas Street: 28’ 4”
- 1169 Douglas Street: 19’
- 1175 Douglas Street: 20’ 6”

Total: 260’ 2”/ 8 homes= 32” 6”

Average “B” (includes set back of prior dwelling on accessory building in front yard, see attachment A)

- 1121 Douglas Street: 34’
- 1137 Douglas Street: 3’
- 1143 Douglas Street: 22’
- 1149 Douglas Street: 20’ 6”
- 1155 Douglas Street: 30’ 10”
- 1165 Douglas Street: 28’ 4”
- 1169 Douglas Street: 19’
- 1175 Douglas Street: 20’ 6”

Total: 178’ 2”/ 8 homes= 19’ 6”

Average “C” (Does not include set back of prior structures)

- 1121 Douglas Street: 34’
- 1137 Douglas Street: X
- 1143 Douglas Street: 22’

1149 Douglas Street: 20' 6"
1155 Douglas Street: 30' 10"
1165 Douglas Street: 28' 4"
1169 Douglas Street: 19'
1175 Douglas Street: 20' 6"

Total: 175/7 homes= 25'

Average "A" (includes property setback of prior dwelling at 1137 S Douglas Street)

Average Setback: 260' 2"/ 8= 32' 6"

Construction setback if built to 32' 6" for the block face is $207' 6" / 8 = 25.95'$ (this represents the buildable front yard setback post construction along the block face should Average "A" be implemented.) The post construction setback for the block face if built to 25.95 is $200.95' / 8 = 25.1'$ (this represents the buildable front yard setback post construction along the block face should Average "A" be implemented.)

Average "B"; includes set back of prior accessory structure at 1137 S Douglas Street

Average Setback: 178' 2"/8 homes= 19' 6"

Construction setback if built to 19' 6" for the block face is $194' 7" / 8 = 24' 3"$ (this represents the buildable front yard set back post construction along the block face should Average A be implemented.)

Note: Section 21A.24.040 E.1 states, "The minimum depth of the front yard for all principal buildings shall be equal to the average of the front yards of existing buildings within the block face." The code does not differentiate between principle and accessory structures when it state "existing buildings within the block face" as such the front yard set back for 1137 South Douglas street prior to demolition could have been stated as 3 feet and not 85 feet.

Average "C"; Property setback of all prior structures at 1137 South Douglas Street is not included because the structures are not existing for the purposes of this development.

Average Setback: 175/7= 25'

Construction setback $200' / 8 = 25'$ (this represents the buildable front yard setback post construction along the block face should Average C be implemented.)

As demonstrated by these numbers, and is representative of any number used as a set back for the tear down structure, the new average will always move towards the represented average of the existing block face. As such the structure to be removed or which has been removed should not be considered to, "exist", for the purpose of calculating the front yard set back average. This ensures that the new structure will better reflect the average set back for the block face.

The proposed and permitted new principal and accessory structures meets all other setback, height and lot area coverage requirements. On August 15, 2007 the Building Permit was obtained, on August 17, 2007 the Demolition Permit was obtained. The demolition and removal of all debris was completed prior to commencing work on the new structure. September 14, 2007 the application for and Appeal of An Administrative Decision was filed.

Attachment A: Demolition Site Plan

Published Date: October 25, 2007

Attachment B: Application and Narrative

