

**City of Baytown
Board of Adjustment
Staff Report**

July 11, 2023

File number: ZP23060033

Request: A variance from the Unified Land Development Code (ULDC), Article III. Division 1. Table 3-1 “Property Development Standards” to reduce street side setback from 15 feet to 6.8 feet at 609 East Adoue Avenue.

Applicant: Shonda Hill

Owner: Shonda Hill

Subject Property: 609 E. Adoue Avenue

Parcel Information:

Zoning: Mixed Residential at Low to Medium Densities (SF2)
Use: Single family detached dwelling

Surrounding Properties Information:

North: Mixed Residential at Low to Medium Densities (SF2);
West: Mixed Residential at Low to Medium Densities (SF2);
East: Mixed Residential at Low to Medium Densities (SF2);
South: Mixed Residential at Low to Medium Densities (SF2).

Background:

The applicant is requesting a variance to allow a new dwelling to encroach approximately 54% (8.2 feet) into the required street side setback of 15 feet. As such the new structure will be setback 6.8 feet from the eastern property line.

The subject property was issued a building permit in August 2022, for a one-story dwelling with a 15 foot street side setback on N. 7th Street, and a front yard setback of 29.7 feet on Adoue Avenue. However, the newly constructed foundation of the structure failed inspection as the location of the foundation was inconsistent with approved plans (see approved plot plan, figure 3). The applicant shifted the foundation of the new structure 8.2 feet towards the eastern property line and 12 feet towards the northern property line, based on consultant advice, without obtaining necessary building permit approvals which necessitate a “Revision to a Building Plan” permit. A zoning variance is required for the encroachment into street side setback.

According to ULDC, Article III, Division 1, Table 3-1. Property Development Standards, a minimum 15 foot street side setback is required in SF2. The newly-constructed foundation with 6.8 foot street side setback is not in compliance with ULDC development standards in SF2 zoning district.

The subject property, approximately 0.15 acres, is located at the southwest corner of Adoue Avenue and N. 7th Street within the Wright Perkins subdivision, and predominantly surrounded by single-family dwellings.

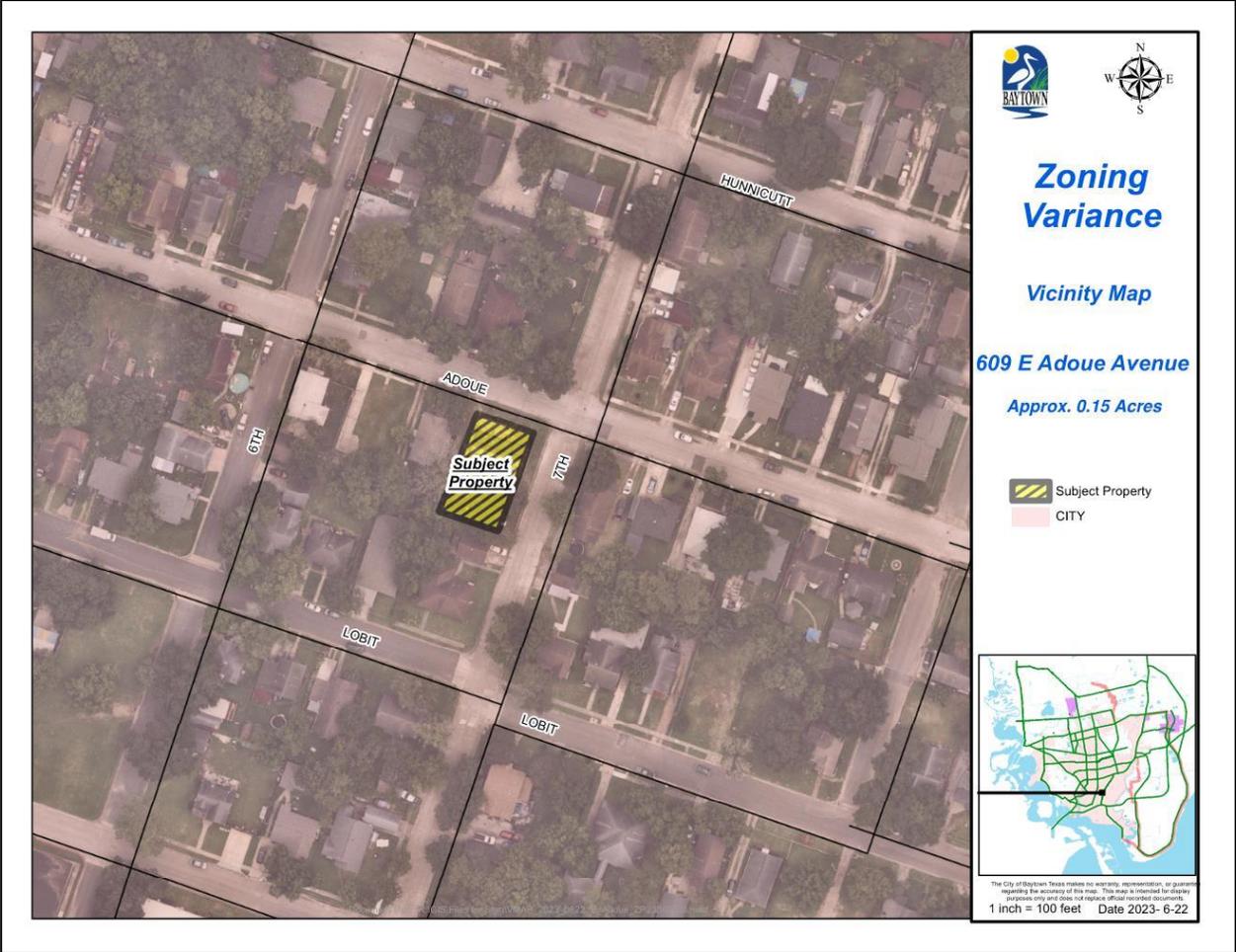


Figure 1. Vicinity Map

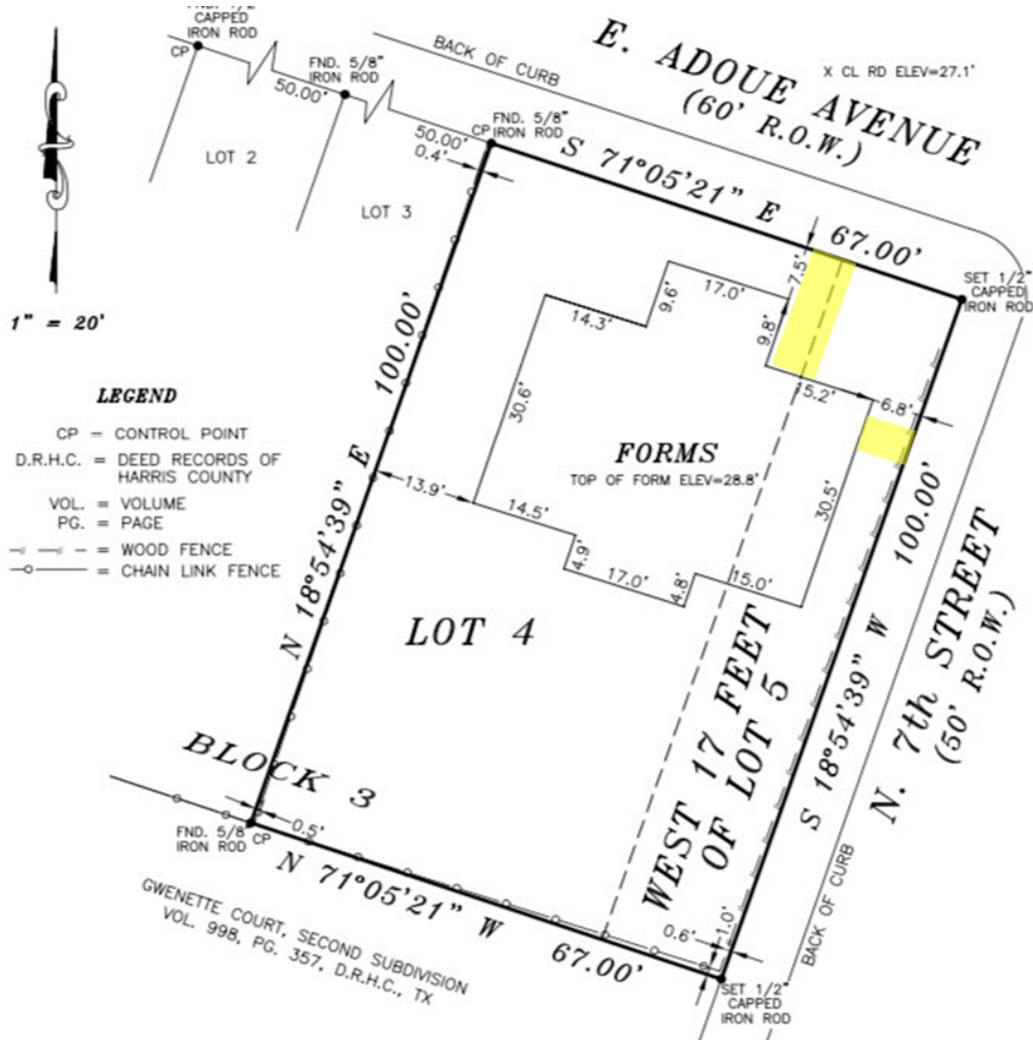


Figure 2. Survey of the subject property (March 2023)

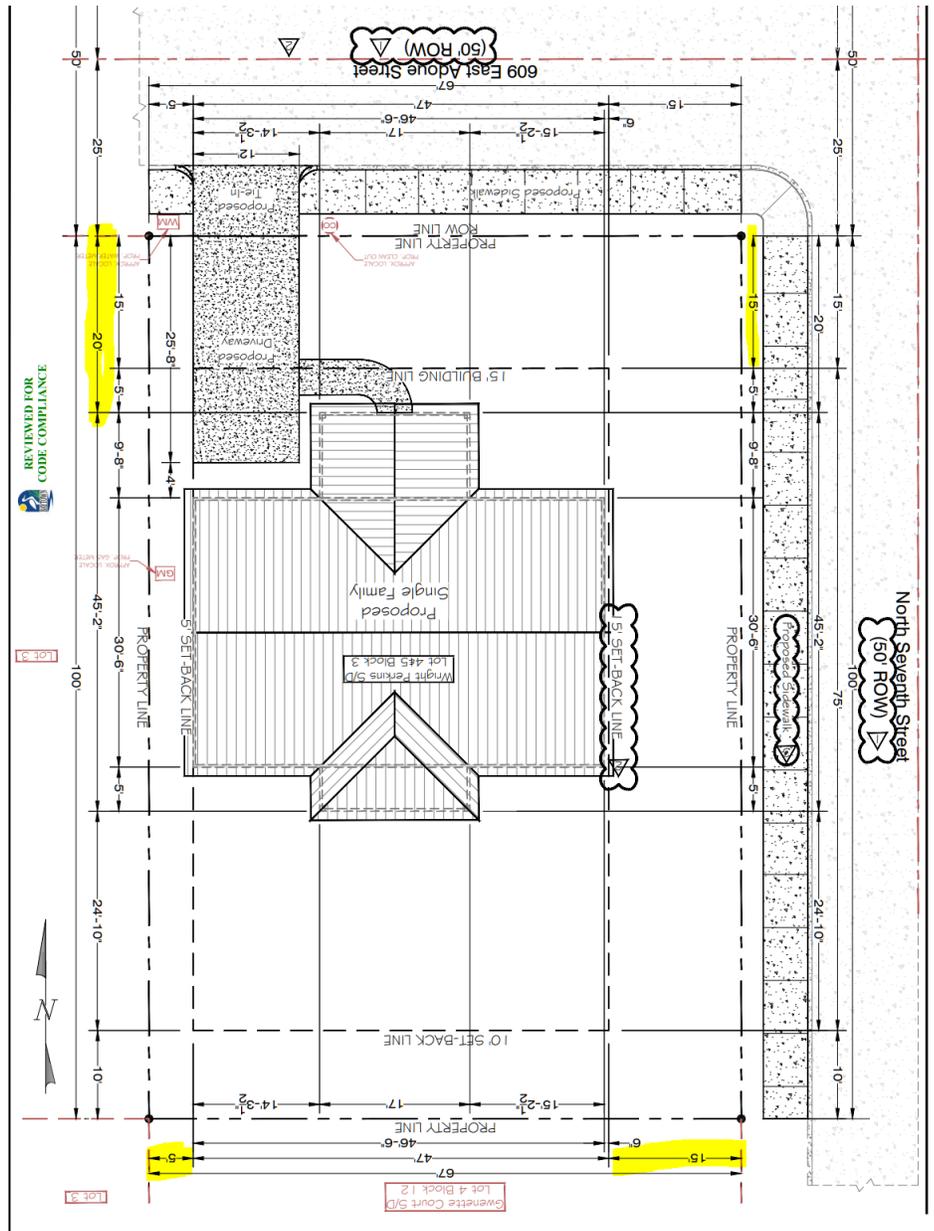


Figure 3. Approved Plot Plan (August 2022)

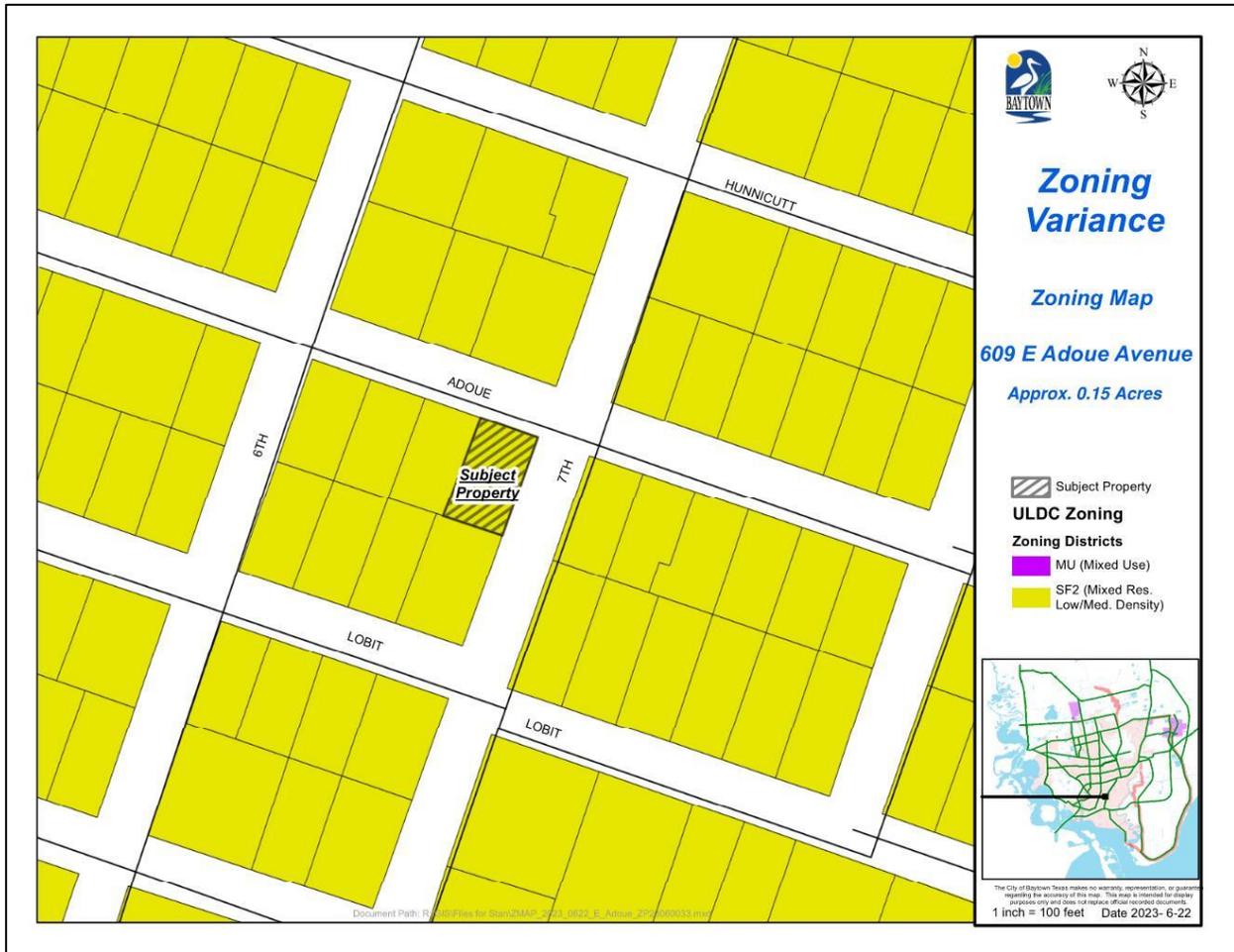


Figure 4. Current Zoning Map

Variance Criteria – Section 1.29(b), ULDC

The board of adjustment may grant a variance when the applicant demonstrates that the variance request will meet all the criteria below:

1. Ensures the same general level of land use compatibility as the otherwise applicable standards;

The requested variance to reduce the minimum required street side setback along N. 7th Street will not affect the general level of land use compatibility. The subject property is located in an SF2 zoning district and a residential dwelling is a permitted use.

2. Is not a hardship of the applicant's own making;

The applicant created their own hardship by placing the foundation of the dwelling at 6.8 feet from the public Right of Way without consulting with city staff nor obtaining the necessary building permits. Approved building plans show the plot plan in compliance with the ULDC at 15 feet street side setback (see approved plot plan, figure 3). Although the applicant expressed a desire to save a rear yard tree from being removed by the approved permit and its structure's location on the property, there is room for the applicant to shift the structure to the front towards Adoue Avenue and also keep the street side setback as approved.

3. **Does not adversely affect adjacent land uses and the physical character of uses in the neighborhood in which the exception is sought because of inadequate buffering, screening, setbacks and other land use considerations;**

It is not anticipated that the proposed variance will adversely affect adjacent land uses or the physical character of uses in the neighborhood. Properties along N. 7th Street are established homes and primarily have similar street side setback to the proposed variance on the subject property. However, the applicant had the approved building plans that comply with the code but chose to change the location of the dwelling based on their consultant's advice.

4. **Does not adversely affect property values of adjacent properties in any material way and will improve the property value of the property for which the exception is sought;**

The proposed encroachment into the street side setback would place the structure beyond what the code allows but would not have any major material effect on adjacent properties. As such, it is not anticipated that property values of adjacent properties will be adversely affected by the requested variance.

5. **Furthers the goals and vision of the city as set forth in the comprehensive plan, the vision statement, and any applicable neighborhood plan or redevelopment plan adopted by the city council;**

The 2040 Comprehensive Plan's strategies allow, promote, and incentivize a variety of housing types for both infill development and new developments. However, the housing and neighborhood goals in the Comprehensive Plan do not suggest or support this type of encroachment on setbacks for new houses in an established neighborhood unless the property has a substandard lot configuration. The property in question has a similar lot configuration to other properties in the vicinity.

6. **Is generally consistent with the purposes and intent of this ULDC;**

The ULDC is adopted for the purpose of promoting the public health, safety and general welfare by promoting safe, orderly and economically sustainable development. The intent of the code for enforcing a minimum 15 foot street side setback is to keep corner properties away from the visibility triangle and promote safety and well-being of residents on sidewalks and public streets. A new residential dwelling in an infill area, for the most part, shall conform to ULDC development standards within its respected zoning district unless the size and/or lot frontage would not accommodate all required development standards. The subject property is considered bigger in lot size than its adjacent properties. As such, the requested variance does not meet the purpose and the intent of the ULDC.

7. **Is needed as special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same district and are not merely financial;**

There is not a peculiar situation for this development. The size of the subject property, 67 feet by 100 feet, is bigger than a standard lot size within the Wright Perkins subdivision. The lot frontage of 67 feet is wide enough to accommodate the proposed 47 foot wide house; 5 foot interior side yard setback on the western property boundary; and 15 foot street side setback on the eastern property boundary.

8. **Is necessary as literal interpretation and enforcement of the terms and provisions of the dimensional standards would deprive the applicant of rights commonly enjoyed by landowners in the same district and would cause an unnecessary and undue hardship;**

The literal interpretation of current code would not deprive the applicant of rights commonly enjoyed by others nor would it create an undue hardship to the applicant. The code requires a minimum 15 foot street side setback along N. 7th Street; and 5 foot interior side yard setback to the adjacent property to the west. The city approved plans in August 2022 (see figure 3) showing that the applicant is able to meet the code. The applicant did not change the size of the structure from approved plans (47 feet by 30.5 feet), but changed the location of the structure closer to the right-of-way which created a violation of the ULDC.

9. **Is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest and which would carry out the spirit of this ULDC and would result in substantial justice;**

This variance request does not reflect a minimum action that would make possible the use of the land nor would it carry out the spirit of the code. The size of the subject property, 6700 square feet, is larger than many properties in the neighborhood and would fit the proposed dwelling in conformity with the ULDC if built as approved in their building permit. Although the applicant has expressed a desire to have the new dwelling further from the adjacent house to the west and utilize the existing driveway curb cut location, there are various options that the property owners could explore to accomplish their goal within the parameters of the code. There is ample space on the property to build the same house and comply with the requirements of the ULDC.

10. **Will bring the existing and proposed structure closer into compliance with the zoning regulations of this ULDC, or will otherwise improve or enhance public health, safety or welfare.**

The variance request will not bring the proposed dwelling closer into compliance with the ULDC's development standards. The requested variance will bring the new dwelling closer to the right-of-way which would be contrary to the intent of the code.

Recommendation:

The requested zoning variance did not meet the majority of the variance criteria; therefore, **staff recommends denial.**