



City of Benbrook Zoning Board of Adjustments

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3/28/2023	ZBA-23-01	A request for a variance to deviate from the requirements of Section 17.98.020.C of the Zoning Ordinance [PUBLIC HEARING]	1 of 3

Request Type: Variance

Site Description: 0.67 acres or 29,204 sqft (per the recorded plat)
Lot 1, Block 1, Country Day Meadows Addition

Location: 6000 Southwest Blvd

Zoning District: "F" Commercial District

**Property Owner/
Applicant:** Devani Brothers, LLC
Janti Devani
Carrolton, TX

SUMMARY

A variance request (see Attachment 1) to deviate from Section 17.98.020.C the Benbrook Municipal Code (BMC) that requires the property owner/applicant, proposing a building expansion of more than 30%, to conform to the city's landscape and bufferyard requirements.

BACKGROUND

During the Texas 87th Legislative Session, Section 211.009 of the Local Government Code (LGC) was revised (per H.B.1475) to include the following as possible grounds to determine whether compliance with an ordinance would result in an unnecessary hardship:

- (1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
- (2) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
- (3) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (5) the municipality considers the structure to be a nonconforming structure.

APPROVAL CRITERIA AND STAFF ANALYSIS

Before granting a variance, State Law requires the Zoning Board of Adjustment (Board) to find:

1. **The variance is not contrary to the public interest;**
 - Based on the applicant's written statement (see Attachment 1), staff finds the variance request is not contrary to the public interest.

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- Many properties in the area do not fully conform to the city’s current landscape regulations.
- The expansion will primarily fit underneath the existing canopy of the gas station, resulting in no increase to the overall footprint of the structure.

2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship;

- According to the applicant’s written statement (see Attachment 1), the cost to bring the property into full compliance with the city’s landscape ordinance exceeds over \$100,000, which is more than 50% of the current value (\$183,923 per TAD) of the entire property.

3. The spirit of the ordinance must be observed; and

- The applicant is proposing to install a substantial amount of landscaping, which brings the property closer into conformance with the current standards.

4. Substantial justice must be done.

- Staff finds that substantial justice is done as the city conducts a public hearing where the Board considers all testimony and evidence presented in order to make a determination on the variance request.

As listed in Section 17.16.060.A of the Benbrook Zoning Ordinance, the following must be considered by the Board when considering granting a variance:

1. That there were special circumstances or conditions affecting the land involved such that the strict application of the provision of this title deprive the applicant of reasonable use of his land;

- Due to the passage of H.B. 1475 allowing for other hardship factors to be considered, this criterion no longer applies.

2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;

- Expansion of a building, in compliance with the development regulations established by the city, is a substantial property right. The applicant has the right to request and have the Board consider granting a variance to deviate from the development regulations.

3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and

- Staff contends that granting this variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area, as other properties in the area have similar landscape non-conformities. In addition, the applicants are proposing to install a substantial amount of landscaping, bringing the property closer into conformance with the current standards. The expansion primarily fits within the footprint of the existing canopy of the gas station.

4. The granting of a variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this title.

- The surrounding properties are developed and have similar landscape non-conformities.

The applicant has submitted a letter (see Attachment 1), detailing how they meet the criterion needed to obtain a variance. This letter, along with any testimony and evidence provided during the public hearing, must be considered by the Board when determining whether or not to grant the variance.

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STAFF RECOMMENDATION

Staff recommends the Board discuss each criterion listed above and determine if the evidence presented during the public hearing satisfies the state and local requirements for obtaining a variance. Staff does not object to the applicant's claims (see Attachment 1) and if the Board finds the applicant has met each requirement, staff recommends approval with the following conditions:

- A building permit for the expansion of the primary building, located the subject site, must be issued by a date approved by the Board; and
- Plans submitted for a building permit must substantially comply to the proposed plans, attached to the staff report (see Attachment 2).

ATTACHMENTS:

1. Applicant's Letter
2. Proposed Plans
3. Site Aerial
4. Location Map