

**BOARD OF ADJUSTMENT
CITY AND COUNTY OF DENVER
201 West Colfax Avenue, Department 201
Denver CO, 80202**

PREMISES AFFECTED: 107 West 4th Avenue
LEGAL DESCRIPTION: Lots 16 & 17 Excluding the North 46.5 Feet Thereof, Block 5, Dailey's Re-subdivision of Part of Broadway Terrace

APPLICANT(S) Polina Sarana & Matthew Slaby, 107 West 4th Avenue, Denver, CO 80223
by Adam Buehler, 863 Santa Fe Drive, Denver, CO 80204

APPEARANCES:

APPLICANT: Polina Sarana & Matthew Slaby, 107 West 4th Avenue, Denver, CO 80223
Adam Buehler, 863 Santa Fe Drive, Denver, CO 80204
Two (2) Signatures of Support

FOR THE CITY: Nicholas Hufford, Zoning Representative
Krystal Marquez, Landmark Preservation Commission

SUBJECT:

Request for a Variance for an attached garage under the General Detached Structure building form encroaching 4 feet 10 inches into the 5-foot rear setback, in a U-RH-2.5 zone district

ACTION OF THE BOARD:

THE VARIANCE IS GRANTED under the Unusual Physical Conditions or Circumstances variance criteria, according to the plans submitted to the Board (Exhibit 6) and the testimony at the hearing. NOTE: A digital copy of the Board-approved plans may be obtained by contacting the Board's staff. These approved plans MUST be submitted to the Development Services Log-In counter when applying for final construction permits for this project.

BOARD OF ADJUSTMENT
Ignacio Correa-Ortiz, Chair

Phillip Williams

Phillip Williams, Deputy Director

THIS ACTION BY THE BOARD OF ADJUSTMENT IS NOT AN APPROVAL TO PROCEED WITH DEVELOPMENT. PLEASE CONTACT YOUR ASSIGNED REVIEWER WITH CPD TO COMPLETE AND FINALIZE YOUR ZONING PERMIT OR ZONE LOT AMENDMENT APPLICATION. CONSTRUCTION OR ANY OTHER DEVELOPMENT ACTIVITY IS PROHIBITED ON THE SUBJECT REAL PROPERTY UNTIL YOU COMPLETE ALL ZONING AND PERMIT APPROVAL PROCESSES.

NOTE!! VARIANCES AUTHORIZING CONSTRUCTION WILL EXPIRE UNLESS START OF CONSTRUCTION HAS OCCURRED WITHIN 3 YEARS AND IS COMPLETED WITHIN 5 YEARS FROM THE DATE THE VARIANCE WAS GRANTED. (FOR EXTENSIONS, SEE DENVER ZONING CODE, SECTION 12.4.7.7.A.2.)

IN THE BOARD OF ADJUSTMENT
THE CITY AND COUNTY OF DENVER
FINDINGS OF FACT AND CONCLUSIONS OF LAW

FEBRUARY 17, 2026

CASE NO. 72-2025

PREMISES: 107 WEST 4TH AVENUE. (Lots 16 & 17 Excluding the North 46.5 Feet Thereof, Block 5, Dailey’s Resubdivision of Part of Broadway Terrace.)

APPLICANT(S): POLINA SARANA & MATTHEW SLABY, 107 West 4th Avenue, Denver, CO 80223, by Adam Buehler, 863 Santa Fe Drive, Denver, CO 80204.

SUBJECT: Request for a Variance for an attached garage under the General Detached Structure building form encroaching 4 feet 10 inches into the 5-foot rear setback, in a U-RH-2.5 zone district

NOTICE OF HEARING: Premises posted. Public notice given in accordance with Section 2-35(2) and 12-96 of the Revised Municipal Code.

APPEARANCES:

Applicant: Polina Sarana & Matthew Slaby, 107 West 4th Avenue, Denver, CO 80223
Adam Buehler, 863 Santa Fe Drive, Denver, CO 80204
Two (2) Signatures of Support

For The City: Nicholas Hufford, Zoning Representative
Krystal Marquez, Landmark Preservation Commission

FINDINGS OF FACT:

- I. The application was timely filed December 30, 2025, from a Zoning Relief Pre-Application Meeting Summary dated November 21, 2025. The case was heard on February 10, 2026, at which time a variance was granted. Final Findings of Fact and Conclusions of Law were adopted by the Board on February 17, 2026.
- II. The Applicants request a variance under Sections 12.4.7.5 and 12.4.7.6 of the Denver Zoning Code (DZC). The Board finds that the Applicants meet the following conditions for a variance under Section 12.4.7.5.A, “Unusual Physical Conditions or Circumstances:”
- A. Unusual Physical Conditions or Circumstances:
1. There are unusual physical circumstances or conditions peculiar to the affected property.
 - a. The subject property is an 1888, two story residence located in the Baker neighborhood. The property is 103 feet 7 inches deep by 50 feet wide, with 5,170 square feet in lot size. The property is located on a block bound by West 4th Avenue to the south, West 5th Avenue to the north, North Bannock Street to the west, and North Acoma Street to the east. The block is subdivided by both an east-to-west and a north-to-south running alley. The properties at the southern end of the block on both sides of the north-to-south running alley are turned to the south to front onto West 4th Avenue. The subject property is located on the northwest corner of West 4th Avenue and North Acoma Street. The Applicants have owned the property since late 2023. In the time they have lived there, the Applicants have noticed a rapid increase in density. There is a six-story multi-family residential structure which has recently been built across from them and Broadway is only a block away to the west. Parking on the street has become more challenging, so the Applicants would like to create sheltered parking on their own zone lot. Unfortunately, the existing conditions on the property do not allow enough space for the creation of

sheltered parking while meeting the zoning requirements. The Applicants have come up with what they believe is a reasonable proposal for a garage addition, but it will need to encroach into the rear setback. They believe their request is justified based on the unusual conditions present on the zone lot and they ask the Board to approve a variance. (Testimony of Adam Buehler. Testimony of Matthew Slaby. See also Exhibit 2 – Board’s Sketch, Exhibit 3 – Board’s Posting Photos, Exhibit 5 – Variance Application, and Exhibit 7 – Applicants’ Presentation.)

- b. At present, the rear façade of the house is located 13.6 feet from the northern property line. There is a concrete patio behind the house which extends from the north side of the house up to the northern property line. There is also a wood deck located to the east of the concrete patio, which partially wraps around the North Acoma Street side of the house. The Applicants propose to remove the concrete patio and modify the wood deck to squeeze a new garage behind the house. The new garage is proposed to be a tandem garage which will be 44 feet 7 inches deep by 14 feet 5 inches wide. It will have a new curb cut and driveway to provide vehicle access to North Acoma Street. The garage will be built up to 2 inches from the west side interior and north rear property lines and will be 5 feet 2 inches from the side street property line along North Acoma Street. This will comply with the setback requirements on the east and west sides, but it will encroach 4 feet 10 inches into the 5-foot north rear setback. The Applicants note that there is no other location for a garage to be built on the property and there is no way build a usable garage without encroaching into the north side setback. They therefore ask the Board to approve their variance request to encroach into the rear setback. (Testimony of Adam Buehler. See also Exhibit 2 – Board’s Sketch, Exhibit 3 – Board’s Posting Photos, Exhibit 5 – Variance Application, and Exhibit 7 – Applicants’ Presentation.)
 - c. The properties along the southern end of the block are generally around 150 feet in depth and extend from West 4th Avenue up to the east-to-west running alley. Unlike the other properties along the southern end of the block, the subject property is only 103 feet 7 inches deep and it does not extend up to the east-to-west running alley. To the north of the property is a small single-family residence at 425 North Acoma Street which is 46.5 feet wide by 50 feet deep. This residence is located at the corner of North Acoma Street and the east-to-west running alley on the block. This residence is built between the subject property and the east-to-west running alley, preventing any vehicle access to the alley from the property. The Applicants note that the lack of alley access and the unusually shallow lot depth make the establishment of a new garage more difficult than a standard zone lot. Their lot is one of the only ones on the block which does not abut an alley, and it is more shallow than a typical zone lot. They thus find that their request is justified by the unusual conditions on the property. (Testimony of Adam Buehler. See also Exhibit 2 – Board’s Sketch, Exhibit 3 – Board’s Posting Photos, Exhibit 5 – Variance Application, and Exhibit 7 – Applicants’ Presentation.)
2. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located except for those adjustments based on any of the conditions listed in Section 12.4.7.5.A.2. The Applicants and CPD defined the existing neighborhood as the north and south sides of West 4th Avenue between North Bannock Street and North Acoma Street, and the west side of North Acoma Street between West 3rd Avenue and West 5th Avenue. In this defined neighborhood, there is only one other property which is similarly shallow and does not abut an alley. (Testimony of Adam Buehler. Testimony of Nicholas Hufford. See also Exhibit 5 – Variance Application, Exhibit 7 – Applicants’ Packet, and Exhibit 9 – CPD Packet.)
 3. The unusual physical circumstances or conditions have not been created by the applicants. The existing conditions on the zone lot were not created by the Applicants. (Testimony of Adam Buehler. See also Exhibit 5 – Variance Application.)

4. The unusual physical condition or circumstance causes the need for the variance. CPD staff note that although the property does not abut an alley, this does not create the need for the variance. While the access could be different if the property abutted an alley, it would still require a 5-foot rear setback. However, CPD does find that the unusual zone lot depth and the location of the existing structure create the need for the variance. (Testimony of Nicholas Hufford. See also Exhibit 9 – CPD Packet.) The Board concurs and finds this condition to be met.
- B. If granted, the variance would meet the following requirements for all variance approvals under 12.4.7.6. DZC:
1. It would not relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure. Any property owner would experience the same issues due to unusually shallow depth of the zone lot and the location of the existing structure.
 2. Except as allowed in Section 12.4.7.5, it would not be justified solely on grounds of loss of a financial advantage, hardship that is solely financial, or a more profitable use of the property might be had if a variance is granted. The variance is justified based on the unusual conditions and circumstances on the property rather than on a financial hardship.
 3. It would not substantially impair the intent and purpose of this Code. The variance is minor and technical under the circumstances. See also Findings II.A. and II.B.
 4. It would not substantially impair the intent and purpose of the applicable zone district. The variance is minor and technical under the circumstances. See also Findings II.A. and II.B.
 5. It would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent property. The variance will not affect light, air, or emergency egress to any adjacent properties. The Applicants have submitted signatures of support from two neighboring property owners, including the most impacted neighbor to the north. (Testimony of Matthew Slaby. See also Exhibit 8 – Signatures of Support.) The Board raised concerns related to the reduced rear setback, in terms of how it would impact the potential for fire spread and for maintenance of the structure. CPD staff noted that while the rear setback was required to be 5 feet, that side setbacks within the rear 35% of the zone lot were permitted to be 0 feet. Although this specific proposal required a variance, placing structures up to a property line was not unusual within the city. The Fire Code would require increased fire protection for structures that close to property lines, which should address concerns over fire spread. As far as maintaining structures built up to property lines, CPD noted that this was a civil issue that the city was not involved in addressing. Where structures were built up to property lines and maintenance would have to occur from a separate property, it was between the individual property owners to determine how and when this would occur. Regardless, structures with essentially 0-foot setbacks commonly occurred throughout the city, and this proposal would not be unusual. (Testimony of Nicholas Hufford.) The Board also noted that the current property owner to the north supported the request and that no one appeared in opposition to the request after fourteen days of posting.
 6. It would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code. See also Findings II.A. and II.B.
 7. It would adequately address any concerns raised by the Zoning Administrator or other City agencies in their review of the application. CPD staff stated that they were in support of the variance, as they found that it satisfied the Unusual Physical Conditions or Circumstances criteria as well as the General Review criteria. CPD also noted that the property was located within the Baker Neighborhood Historic District and was subject to approval from the Landmark Preservation Commission (LPC). CPD noted that LPC had not approved the design of the garage at this time. With the need for a variance and with the property being located in a historic district, the Applicants would need approval from the Board of Adjustment for the variance and from the LPC for the overall bulk and massing of the structure as well as the new curb cut. There is no sequence required for these approvals, but

the Applicants would still have to seek LPC approval if the variance were approved. A representative for the LPC attended the hearing and noted that there were some concerns with the garage extending out past the façade of the house along North Acoma Street. This is something that the Commission will have to review if the variance is approved, but CPD noted that there was a possibility that the design may have to change somewhat depending on the position of the LPC. (Testimony of Nicholas Hufford. Testimony of Krystal Marquez. See also Exhibit 9 – CPD Packet.) The Board concurred and found that although the overall design would require approval from the LPC following the variance, that the criteria for approving the variance had been met.

- CONCLUSION: The Board concludes that the conditions set forth in Sections 12.4.7.5 and 12.4.7.6 of the Zoning Code do exist, and a variance is in order.
- MOTION: The motion by Mr. Haywood to grant the variance as requested was seconded by Mr. Rice and was adopted.
- VOTE: FOR: 5 AGAINST: 0
- ACTION OF THE BOARD: **THE VARIANCE IS GRANTED** under the Unusual Physical Conditions or Circumstances variance criteria, according to the plans submitted to the Board (Exhibit 6) and the testimony at the hearing. NOTE: A digital copy of the Board-approved plans may be obtained by contacting the Board’s staff. These approved plans **MUST** be submitted to the Development Services Log-In counter when applying for final construction permits for this project.