

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, JANUARY 16, 2018**

MEMBERS PRESENT AT BRIEFING: Elizabeth Nelson, acting vice-chair, John Jones, regular member, Jay Narey, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Peter Schulte, Vice-chair

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Atty., Jennifer Munoz, Senior Planner, Todd Duerksen, Development Code Specialist, David Nevarez, Engineering, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Elizabeth Nelson, acting vice-chair, John Jones, regular member, Jay Narey, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: Peter Schulte, Vice-chair

STAFF PRESENT AT HEARING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Atty., Jennifer Munoz, Senior Planner, Todd Duerksen, Development Code Specialist, David Nevarez, Engineering, and Trena Law, Board Secretary

**11:20 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 16, 2018** docket.

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**1:09 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel November 14, 2017 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2018**

MOTION:           None

The minutes were approved without a formal vote.

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**FILE NUMBER:**     BDA178-002(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Geraldo Zamudio, represented by Maria Valdez, for special exceptions to the fence standards regulations at 3615 Bickers Street. This property is more fully described as Lot 3, Block 4/7148, and is zoned R-5(A), which limits the height of a fence in the front yard to 4 feet, requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line, and prohibits certain materials. The applicant proposes to construct and/or maintain a 7 foot high fence in a required front yard, which will require a 3 foot special exception to the fence standards, to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, and to construct and/or maintain a fence constructed of a prohibited metal material, which will require special exceptions to the fence standards.

**LOCATION:**           3615 Bickers Street.

**APPLICANT:**        Geraldo Zamudio  
                          Represented by Maria Valdez

**REQUEST:**

The following requests have been made on a site that is currently developed with a storage structure:

1. A special exception to the fence standards related to fence height of up to 7' is made to maintain a 7' high board-on-board wood fence and a 7' metal fence in this front yard setback;
2. A request for a special exception to the fence standards related to fence materials is made to maintain a fence with panels with surface areas that are less than 50 percent open (the solid wood and solid metal fence sections located as close as on the front lot line (or less than 5' from this front lot line); and,
3. A request for a special exception to the fence standards related to fence materials is made to maintain a fence with panels constructed of a prohibited

metal material along the east and west property boundaries perpendicular to Bickers Street.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION (fence standards):**

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-5(A) (Single family district 5,000 sq. ft.)  
North: R-5(A) (Single family district 5,000 sq. ft.)  
South: R-5(A) (Single family district 5,000 sq. ft.)  
East: R-5(A) (Single family district 5,000 sq. ft.)  
West: R-5(A) (Single family district 5,000 sq. ft.)

**Land Use:**

The subject site is developed with a detached storage structure (no single family home on-site). The areas to the north, south, east, and west are developed with detached structures and agricultural uses.

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

**GENERAL FACTS/STAFF ANALYSIS (fence standards):**

- The focus of the three requests for special exceptions to the fence standards (one is related to height of up to 7' (3' special exception) and two are related to fence materials (solid nature and prohibited material) is maintaining the following fence in the site's 20' front yard along Bickers Street:
  - 1) a 7' high board-on-board wood fence along the property line parallel to Bickers Street and a 7' metal fence along the property lines perpendicular to Bickers Street;
  - 2) a 7' high board-on-board wood fence and a 7' metal fence *both solid in nature* and located along the property lines, or closer than 5' from the front lot line; and,

- 3) a 7' metal fence (a prohibited material) along the property lines perpendicular to Bickers Street.
- The subject site is zoned R-5(A) which requires a 20' front yard setback.
- The Dallas Development Code Sec. 4.602 (a) states:
  - 1) that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
  - 2) that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
  - 3) that the following fence materials are prohibited:
    - a. Sheet metal;
    - b. Corrugated metal' Fiberglass panels;
    - c. Plywood;
    - d. Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
    - e. Barbed wire and razor ribbon (concertina wire) in residential districts other than A(A) Agricultural District; and
    - f. Barbed wire and razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade.
- The site is located along the north line of Bickers Street, east of Esmalda Drive.
- The applicant has submitted a site plan and elevation documents of the proposed fences in the front yard setbacks with notations indicating that the proposal reaches a maximum height of 7'. The fence has already been constructed and includes a much taller iron bar across the top of the wooden fence facing Bickers Street. The request does not include this portion of the existing fence and would have to be removed if the current requests are granted.
- The applicant has submitted a site plan/elevation of the proposal with a fence panel having a surface area that is less than 50 percent open and located less than 5' from this front lot line – 7' high board-on-board wood fence (parallel) and a 7' metal fence (perpendicular) *both solid in nature* and located along the property lines.
- The following additional information was gleaned from the submitted site plan:
  - Along Bickers Street: the proposal is represented as being approximately 50' in length parallel to the street and approximately 20' perpendicular to the street on the east and west sides of the site in the required front yard; located on the front property line (unpaved street).
- The Board Senior Planner conducted a field visit of the site and surrounding area and noted that the metal fence sections perpendicular to Bickers proceed past the front yard for a total of 116' (the entire length of the lot) and transform into the sides of the detached storage structure—the only structure on the site.

- During the field visit of the site and surrounding area the Senior Planner noted several other fences that appeared to be above 4' in height and located in a front yard setback. None appear to be a result of special exceptions granted by the Board of Adjustment.
- As of January 5, 2018, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height of 4' and to location and materials on Bickers Street will not adversely affect neighboring property.
- Granting these special exceptions to the fence standards related to height of up to 4' and to location and materials in certain areas and of prohibited materials on the site with a condition imposed that the applicant complies with the submitted site plan/elevation documents, would require the proposal exceeding 4' in height in the front yard setbacks and in some areas solid fence panels on the front lot line and composed of the material prohibited by code to be maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

October 25, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 19, 2017: The Board Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standards that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

No review comment sheets were submitted in conjunction with this application.

**BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2018**

APPEARING IN FAVOR: Geraldo Zamudio, 3615 Bickers St., Dallas, TX

APPEARING IN OPPOSITION: Maxwell Fisher, 900 Jackson St., Dallas, TX

TRANSLATING FOR CITY: Mary Williams, 1500 Marilla St., 5BN, Dallas, TX

**MOTION #1: Sibley**

I move that the Board of Adjustment, in Appeal No. **BDA 178-002(JM)**, on application of Geraldo Zamudio represented by Maria Valdez, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

**SECONDED: Jones**

AYES: 4 – Nelson, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

**MOTION #2: Sibley**

I move that the Board of Adjustment, in Appeal No. **BDA 178-002(JM)**, on application of Geraldo Zamudio represented by Maria Valdez, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

**SECONDED: Jones**

AYES: 4 – Nelson, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

**MOTION #3: Sibley**

I move that the Board of Adjustment, in Appeal No. **BDA 178-002(JM)**, on application of Geraldo Zamudio represented by Maria Valdez, **deny** the special exception to construct and/or maintain a fence constructed of a prohibited material requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

**SECONDED: Jones**

AYES: 4 – Nelson, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

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**FILE NUMBER:** BDA178-003(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Jorge Hernandez for special exceptions to the fence standards and visual obstruction regulations at 9025 Douglas Avenue. This property is more fully described as an unplatted 0.87 acre tract in Block 8/5598 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet, requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line, and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards, and to locate and maintain items in required visibility triangles, which will require a special exceptions to the visual obstruction regulations.

**LOCATION:** 9025 Douglas Avenue

**APPLICANT:** Jorge Hernandez

**REQUESTS:**

The following requests have been made on a site that is currently developed with a single family home structure:

- Along Douglas Avenue:
  1. A special exception to the fence standards related to fence height of 2' 6" is made to maintain a 6' high open rod iron fence/gates with 6' 6" high brick columns in this front yard setback; and
  2. Special exceptions to the visual obstruction regulations are made to maintain portions of the aforementioned 6' high open rod fence and 6' 6" high brick columns located in the four, 20' visibility triangles on both sides of the driveways into the site from this street.
- Along Park Lane:
  1. A special exception to the fence standards related to fence height of 4' is made to maintain a 6' high open rod iron fence/gate with 6' 6" high brick columns, and an 8' high solid wood fence in this front yard setback; and
  2. A special exception to the fence standards related to fence materials is made to maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned 8' high solid wood fence) in this front yard setback and as close as on this front property line (or less than 5' from this front lot line).

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

Section 51A-4.602(a)(11) of the Dallas Development Code states that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

Section 51A-4.602(d)(3) of the Dallas Development Code states that the Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

**STAFF RECOMMENDATION (Fence special exception):**

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION (Visual obstruction special exceptions):**

Approval, subject to the following condition:

- Compliance with the submitted revised site plan and revised elevation is required.

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items located in the visibility triangles do not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac(A) (Single family residential 1 acre)  
North: R-1ac(A) (Single family residential 1 acre)  
South: R-1ac(A) (Single family residential 1 acre)  
East: R-1ac(A) (Single family residential 1 acre)  
West: R-1ac(A) (Single family residential 1 acre)

**Land Use:**

The subject site is developed with a single family use. The areas to the north, east, south, and west are developed with single family uses.

**Zoning/BDA History:**

1. BDA134-100, Property at 5813 Park Lane (the lot northeast of the subject site)

On October 22, 2014, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 2', and imposed the submitted site plan and partial elevations as a condition to the request.

The case report stated that the request was made to maintain an approximately 5' 4" high open metal picket fence and gate with 66" (or 5' 6") high columns in the site's two front yard setbacks along Park Lane and Douglas Avenue on property developed with a single family home.
  
2. BDA 094-004, Property at 5811 Park Lane (the lot northeast of the subject site)

On January 11, 1994, the Board of Adjustment granted a request for a special exception to the fence height regulations of 3', and imposed the submitted site plan and elevation as a condition to the request.

The case report stated that the request was made in conjunction with constructing an open metal fence and gate on Park Lane no higher than 7' in height, and replacing an existing 4' chain link fence along Douglas Avenue with a 6' high vinyl chain link fence.
  
3. BDA 045-268, Property at 5810 Park Lane (the lot east of the subject site)

On August 16, 2005, the Board of Adjustment Panel A granted a request for a special exception to fence height regulations of 6', and imposed the following condition: compliance with the submitted site plan, landscape plan, and fence elevation is required.

The case report states that the request was made in conjunction with constructing and maintaining an open iron fence (6' 2"), columns (6' 8"), and gates (6'9") along Park Lane and a 10' high tennis court fence along Douglas Avenue.

- |   |   |
|---|---|
| <p>4. BDA 956-189, Property 5825 Park Lane (two lots northeast of the subject site)</p>   | <p>On April 23, 1996, the Board of Adjustment Panel C granted a request for a special exception to fence height regulations of 4', and imposed the following condition: compliance with the submitted revised site/landscape plan and elevation is required. The case report stated that the original request was made to construct a 6' 8" high solid brick and stone fence with 7' 3" high stone columns and an 8' high entry gate and columns.</p>                         |
| <p>5. BDA 056-111, Property 5508 Desco Drive (two lots northeast of the subject site)</p> | <p>On May 15, 2006, the Board of Adjustment Panel C granted a request for a special exception to fence height regulations of 3', and imposed the following condition: compliance with the submitted site plan and revised elevation is required. The case report stated that the original request was made to construct and maintain an approximately 6' 6" high open picket fence with 7' high columns in the site's Desco Drive and Douglas Avenue front yard setbacks.</p> |

**GENERAL FACTS/STAFF ANALYSIS (Fence standard special exceptions):**

- The requests for special exceptions to the fence standards related to height and materials focus on maintaining a 6' high open rod iron fence with 6' 6" high brick columns in the site's Douglas Avenue and Park Lane front yard setbacks (fences higher than 4' high in one of the site's two front yard setbacks), and maintaining a fence with panels with a surface area that is less than 50 percent open (an 8' high solid wood fence) in the Park Lane front yard setback as close as on this front property line or less than 5' from this front lot line.
- Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The property is located in an R-1ac(A) zoning district which requires a minimum front yard setback of 40 feet.
- The subject site is located at the southwest corner of Park Lane and Douglas Avenue. Regardless of how the existing structure is oriented to front Douglas Avenue, the subject site has 40' front yard setbacks along both street frontages. The site has a 40' front yard setback along Park Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 40' front yard setback along Douglas Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where the Dallas Development Code allows a 9' high fence. But the site's Douglas Avenue frontage is treated as a front yard setback nonetheless to maintain the continuity of

the established front yard setback established by the lots to the south that front/are oriented eastward towards Douglas Avenue.

- The submitted revised site plan and revised elevation indicates that the fences in the site's two front yard setbacks reach a maximum height of 8'.
- The submitted revised site plan denotes the following:
  - The existing fence over 4' in height in the Douglas Avenue front yard setback is represented as being approximately 200' in length parallel to this street.
  - The existing fence in the Douglas Avenue front yard setback is represented as being located approximately on the front property line, and approximately 13' from the pavement line.
  - The existing fences over 4' in height in the Park Lane front yard setback is represented as being approximately 160' in length parallel to this street and approximately 40' in length perpendicular to this street on the west side of the site in the front yard setback.
  - Of the approximately 160' length of the fences in this front yard setback, approximately 60' of it length is solid wood and the remaining is open rod iron.
  - The existing fences in the Park Lane front yard setback are represented as being located approximately on the front property line, and approximately 20' from the pavement line.
- Single family lots front the existing fences on the subject site. The lot directly north has a fence in its front yard (an approximately 6' high solid masonry fence) with no recorded BDA history, and the lot directly east has fences in its front yard behind significant landscape materials that appears to be a result of a special exception to the fence standards granted by the Board in 2005: BDA045-268.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 400' north, south, east, and west of the subject site) and noted a number of other fences that appeared to be over 4' in height and in a front yard setback. Most of these fences are referenced in the "Zoning/BDA History" section of this case report.
- As of January 5, 2018, no letters had been submitted in support of the application, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to fence height of 4' and materials will not adversely affect neighboring property.
- Granting one and/or both of these special exceptions with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would require the proposal/existing fences exceeding 4' in height and some of which are of solid materials located on the front lot line to be maintained in the location and of the heights and materials as shown on these documents.

**GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):**

- The requests for special exceptions to the visual obstruction regulations focus on maintaining portions of a 6' high open rod fence and 6' 6" high brick columns located in the four, 20' visibility triangles on both sides of the driveways into the site from this Douglas Avenue on a site developed with a single family home.

- Section 51A-4.602(d)(1) of the Dallas Development Code The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The submitted revised site plan and revised elevation indicates portions a 6' high open rod fence and 6' 6" high brick columns located in the four, 20' visibility triangles on both sides of the driveways into the site from this Douglas Avenue.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections" with the following comment: "Home is detached from proposed fence/gate. Proposed gate provides enough space for a vehicle to stand while gate opens without encroaching on travel lanes".
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain portions of a 6' high open rod fence and 6' 6" high brick columns located in the four, 20' visibility triangles on both sides of the driveways into the site from this Douglas Avenue do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would limit the items located in the 20' drive approach visibility triangles to that what is shown on these documents –a 6' high open rod fence with 6' 6" high brick columns.

**Timeline:**

October 25, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 4, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

December 27, 2017: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded additional information to the Board

Administrator that had been submitted to him by the beyond what was submitted with the original application (see Attachment A).

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: Sustainable Development and Construction Assistant Director, the the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

January 3, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections" with the following comment: "Home is detached from proposed fence/gate. Proposed gate provides enough space for a vehicle to stand while gate opens without encroaching on travel lanes".

**BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2018**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move to grant that the Board of Adjustment grant application **BDA 178-003(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and revised elevation is required.

SECONDED: **Narey**

AYES: 4 – Nelson, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

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FILE NUMBER: BDA178-004(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Luis Rosillo, represented by Mike Arreguin, for a special exception to the fence standards at 2905 Jordan Valley Road. This property is more fully described as Lot 2, Block A/8789, and is zoned A(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 7 foot high fence in a required front yard, which will require a 3 foot special exception to the fence standards.

**LOCATION:** 2905 Jordan Valley Road

**APPLICANT:** Luis Rosillo  
Represented by Mike Arreguin

**REQUEST:**

A request for a special exception to the fence standards related to fence height of 7' is made to construct and maintain a fence higher than 4' in height in the site's 50' front yard setback– a 5' high open steel mesh fence with a 7' open steel mesh rolling gate on a site that is developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION (fence standards):**

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

**BACKGROUND INFORMATION:**

**Zoning:**

<u>Site:</u>	A(A) (Agricultural District)
<u>North &amp; Northwest:</u>	A(A) (Agricultural District)
<u>Northeast:</u>	R-10(A) (Single family district 10,000 sq. ft.)
<u>South:</u>	A(A) (Agricultural District)
<u>East:</u>	A(A) (Agricultural District)
<u>West:</u>	A(A) (Agricultural District)

**Land Use:**

The subject site is developed with a single family home. All surrounding areas are developed with single family and agricultural uses.

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

**GENERAL FACTS/STAFF ANALYSIS (fence standards):**

- The focus of request for a special exception to the fence standards related to height of up to 7' (3' special exception) is constructing and maintaining a 5' high open steel mesh fence, a 5' high open steel mesh rolling gate (30' wide), and a

7' high open steel rolling gate (20' wide) all along the site's Jordan Valley Road 50' front yard setback on the front lot line and perpendicular to the street on a site developed with a single family home. The majority of the fence has been erected, with a remainder pending completion at the north corner of the property along the street frontage.

- The site is located on the west line of Jordan Valley Road within an A(A) zoning district which requires a minimum front yard setback of 50'.
- The Dallas Development Code Sec. 4.602 (a) (1) states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and elevation documents of the existing/proposed fence in the front yard setback with notations indicating that the proposal reaches a maximum height of 7'.
- The Board Senior Planner conducted a field visit of the site and surrounding area and noted several other fences that appeared to be above 4' in height and located in a front yard setback with no apparent Board of Adjustment history/action.
- As of January 5, 2018 no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height of 3' on Jordan Valley Road will not adversely affect neighboring property.
- Granting these special exceptions to the fence standards related to height of up to 3' in certain areas on the site with a condition imposed that the applicant complies with the submitted site plan/elevation documents, would require the proposal exceeding 4' in height in the front yard setbacks to be maintained in the location and of the heights and materials as shown on these documents.

### **Timeline:**

October 24, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 19, 2017: The Board Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standards that the board will use in their decision to approve or deny the requests; and

- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

No review comment sheets were submitted in conjunction with this application.

**BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2018**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move to grant that the Board of Adjustment grant application **BDA 178-004(JM)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/elevation is required.

SECONDED: **Narey**

AYES: 4 – Nelson, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

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FILE NUMBER: BDA178-008(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Jeffrey A. Shaw, represented by D'Jelma Perkison, for a special exception to allow the reconstruction of a structure in an FP Flood Plain area at 10443 Coleridge Street. This property is more fully described as Lot 8, Block A/5380, and is zoned R-7.5(A), which limits construction within a flood plain. The applicant proposes to reconstruct a structure within a flood plain, which would require a special exception to the flood plain regulations.

LOCATION: 10443 Coleridge Street

APPLICANT: Jeffrey A. Shaw  
Represented by D'Jelma Perkison

**REQUEST:**

A request for a special exception to the flood plain regulations is made to rebuild/reconstruct a single family home in a floodplain overlay that has been partially destroyed by fire, more specifically, according to a note on the submitted floor plan, to “remodel home after fire damage; footprint and exterior openings and cladding to remain as existing, interior finish-out only; replace roof”, and according to a note on the submitted site plan: “no change to current footprint or exterior”.

**STANDARD FOR A SPECIAL EXCEPTION TO ALLOW THE RECONSTRUCTION OF A STRUCTURE IN AN (FP) FLOOD PLAIN AREA:**

Section 51A-5.104 states that the board of adjustment may grant a special exception to allow the reconstruction of a structure in an FP area upon a showing of good and sufficient cause, a determination that failure to allow the reconstruction would result in exceptional hardship to the property owner, and a determination that the reconstruction will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other local laws. The board may not grant a special exception to authorize reconstruction within any designated floodway if any increase in flood levels during the base flood discharge would result. Any special exception granted must be the minimum necessary, considering the flood hazard, to afford relief. The reconstruction of a structure in an FP area may not increase the lot coverage of the structure.

(A) The director of Trinity watershed management shall notify in writing the owner of a structure in an FP area that:

(i) the granting of a special exception to reconstruct the structure below the base flood level will result in increased premium rates for flood insurance that will be commensurate with the increased risk; and

(ii) the construction below the base flood level increases risks to life and property. The notification letter must be maintained with the record of the board’s action.

(B) The FP Administrator shall maintain a record of all actions involving applications for special exceptions and shall report special exceptions to FEMA upon request.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted the site plan denoting “no change to current footprint or exterior” is required.

Rationale:

- Staff concluded that the special exception should be granted because the City of Dallas Senior Engineer of the Trinity Watershed Management has no objections to this request with the condition that the footprint of the home cannot be expanded whereby the applicant’s request to “remodel home after fire damage; footprint and exterior openings and cladding to remain as existing, interior finish-out only; replace

roof' with "no change to current footprint or exterior" will not result in increased flooding or additional threats to public safety.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-7.5(A)(FP) (Single family district 7,500 square feet, flood plain)  
North: R-7.5(A)(FP) (Single family district 7,500 square feet, flood plain)  
South: R-7.5(A)(FP) (Single family district 7,500 square feet, flood plain)  
East: R-7.5(A)(FP) (Single family district 7,500 square feet, flood plain))  
West: R-7.5(A)(FP) (Single family district 7,500 square feet, flood plain))

### **Land Use:**

The subject site is developed with a single family structure. The areas to the north, south, east, and west are developed with single family uses.

### **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

## **GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the flood plain regulations focuses on rebuilding/reconstructing a single family home in a floodplain overlay that has been partially destroyed by fire, more specifically, according to a note on the submitted floor plan, to "remodel home after fire damage; footprint and exterior openings and cladding to remain as existing, interior finish-out only; replace roof", and according to a note on the submitted site plan: "no change to current footprint or exterior".
- The Dallas Development Code defines FLOOD PLAIN (FP) as "any land area susceptible to inundation by the design flood."
- The Dallas Development Code states that the owner of a structure in an FP area shall not make any improvements to the structure without first obtaining approval from the director of Trinity watershed management. The director of Trinity watershed management may approve proposed improvements if the cumulative value of all improvements for the previous ten years is less than 50 percent of the market or tax appraisal value of improvements on the property, whichever is greater. No substantial improvements are permitted. Any improvement must comply with the requirements of Section 51A-5.105(g).
- The Dallas Development Code requires that the director of Trinity watershed management shall notify in writing the owner of a structure in an FP area that:
  - 1) the granting of a special exception to reconstruct the structure below the base flood level will result in increased premium rates for flood insurance that will be commensurate with the increased risk; and
  - 2) the construction below the base flood level increases risks to life and property. The notification letter must be maintained with the record of the board's action.

- According to DCAD records, the “main improvement” for property addressed at 10443 Coleridge Street is a structure built in 1958 with 2,166 square feet of living/total area with the following “additional improvements”: a 504 square foot attached garage.
- The City of Dallas Program Senior Engineer of the Trinity Watershed Management has indicated with no objections to this request commenting that the existing footprint of the home cannot be expanded, and that Trinity Watershed Management will review plans submitted with the building permit and issue an approval letter for a floodplain alteration permit.
- The applicant has the burden of proof in establishing the following:
  - The board of adjustment may grant the special exception to allow the reconstruction of a structure in an FP area upon a showing of good and sufficient cause, a determination that failure to allow the reconstruction would result in exceptional hardship to the property owner, and a determination that the reconstruction will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other local laws. The board may not grant a special exception to authorize reconstruction within any designated floodway if any increase in flood levels during the base flood discharge would result. Any special exception granted must be the minimum necessary, considering the flood hazard, to afford relief. The reconstruction of a structure in an FP area may not increase the lot coverage of the structure.
- Granting this special exception with the condition imposed that the applicant comply with the submitted site plan would allow the rebuilding/reconstruction a single family home in a floodplain overlay partially destroyed by fire with no change or expansion of its current building footprint.

### **Timeline:**

November 15, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 4, 2017: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

January 5, 2018: The City of Dallas Senior Engineer of the Trinity Watershed Management forwarded a review comment sheet marked "Has no objections if certain conditions are met" commenting: "Cannot expand the footprint of the home; and Trinity Watershed Management will review plans submitted with building permit and issue an approval letter for a floodplain alteration permit".

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

**BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2018**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move to grant that the Board of Adjustment grant application **BDA 178-008(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan denoting "no change to current footprint or exterior" is required.

SECONDED: **Narey**

AYES: 4 – Nelson, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

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**FILE NUMBER:** BDA178-006(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Robert Baldwin of Baldwin and Associates for a variance to the front yard setback regulations at 5243 Park Lane. This property is more fully described as an unplatted 1.219 acre tract in Block 1/5589 and is zoned R-1ac(A), which requires a front yard setback of 40 feet. The applicant proposes to construct and maintain a structure and provide a 34 foot front yard setback, which will require a 6 foot variance to the front yard setback regulations.

**LOCATION:** 5243 Park Lane

**APPLICANT:** Robert Baldwin of Baldwin and Associates

**REQUEST:**

A request for a variance to the front yard setback regulations of up to 6’ is made to construct and maintain an addition to an existing carport attached to a single family home structure – an addition that would involve transitioning an existing carport to a garage structure, part of which would be located as close as 34’ from one of the site’s two front property lines (Meadowbrook Drive) or as much as 6’ into this 40’ front yard setback.

**STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- While staff recognized that the subject site is unique and different from most lots in the R-1ac(A) zoning district in that it is irregular in shape and more restrictive in area than most lots in the same zoning district due to having two, 40' front yard setbacks, staff concluded that the applicant had not substantiated how this lot could not be developed in a manner commensurate with the development upon other parcels of land with the same R-1ac(A) zoning district. The site is over an acre in area (1.2 acres) where the size, shape and slope of it has allowed it to be developed with a single family use (according to DCAD, an approximately 12,000 square foot home with garage) that complies with setbacks.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac(A) (Single family residential 1 acre)  
North: R-1ac(A) (Single family residential 1 acre)  
South: R-1ac(A) (Single family residential 1 acre)  
East: R-1ac(A) (Single family residential 1 acre)  
West: R-1ac(A) (Single family residential 1 acre)

**Land Use:**

The subject site is developed with a single family home. The areas to the north, south, east and west are developed with single family residential uses.

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for variance to the front yard setback regulations of up to 6' focuses on constructing and maintaining an approximately 550 square foot addition to an existing carport attached to a single family home structure – an addition that would involve transitioning the existing carport to a garage structure, part of which would be located as close as 34' from one of the site's two front property lines (Meadowbrook Drive) or as much as 6' into this 40' front yard setback.
- The property is located in an R-1ac(A) zoning district which requires a minimum front yard setback of 40 feet.
- The subject site is located at the northwest corner of Park Lane and Meadowbrook Lane. Regardless of how the existing structure is oriented to front Park Lane, the subject site has 40' front yard setbacks along both street frontages. The site has a 40' front yard setback along Park Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 40' front yard setback along Meadowbrook Drive, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 10' side yard setback is required. But the site's Meadowbrook Drive frontage that

functions as a side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots to the north that front/are oriented eastward towards Meadowbrook Drive.

- The submitted scaled site plan/section indicates that the garage addition is proposed to be located as close as 34' from the Meadowbrook Drive front property line or as much as 6' into this 40' front yard setback. (No encroachment is shown or requested to be located in the site's Park Lane 40' front yard setback).
- According to DCAD records, the "main improvement" for property addressed at 5243 Park Lane is structure built in 1957 with 11,851 square feet of living/total area, and that "additional improvements" are an 816 square foot attached garage, a pool, and a 516 square foot unfinished space.
- According to calculations made by the Board Administrator from the submitted site plan/section, approximately 100 square feet of the approximately 550 square foot addition would be located in the Meadowbrook Drive 40' front yard setback.
- The site is somewhat sloped, irregular in shape, and, according to the application, 1.219 acres in area. The site is zoned R-1ac(A) where lots are typically one acre in area. (The application notes that the site is "heavily treed" as shown on the submitted site plan/section).
- The site has two 40' front yard setbacks and two 10' side yard setbacks. Most lots in the R-1ac(A) zoning district have one 40' front yard setback, two 10' side yard setbacks, and one 10' rear yard setback.
- The approximately 175' wide subject site has 125' of developable width available once a 40' front yard setback is accounted for on the east and a 10' side yard setback is accounted for on the west. If the lot were more typical to others in the zoning district with only one front yard setback, the approximately 175' wide site would have 155' of developable width.
- No variance would be necessary for the addition if the Meadowbrook Drive frontage were a side yard since the site plan represents that the proposed addition being no closer than 34' from the Meadowbrook Drive property line and the side yard setback for properties zoned R-1ac(A) is 10'.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classification.
  - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan/section as a condition, the structure in the front yard setback would be limited

to what is shown on this document which in this case is an addition that would be located no closer than 34 from the site's Meadowbrook Drive front property line (or as much as 6' into this 40' front yard setback).

**Timeline:**

November 7, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 4, 2017: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

No review comment sheets were submitted in conjunction with this application.

**BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2018**

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Narey**

I move that the Board of Adjustment, in Appeal No. **BDA 178-006(SL)**, on application of Robert Baldwin, **grant** the six foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary

hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/section is required.

**SECONDED: Nelson**

**AYES:** 4 – Nelson, Jones, Narey, Sibley

**NAYS:** 0 -

**MOTION PASSED:** 4– 0 (unanimously)

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**FILE NUMBER:** BDA178-007(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Jorge Pina, represented by Elias Rodriguez, for a variance to the side yard setback regulations at 1455 Traymore Avenue. This property is more fully described as Lot 20, Block 20/6237, and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a structure and provide a 4 foot side yard setback, which will require a 1 foot variance to the side yard setback regulations.

**LOCATION:** 1455 Traymore Avenue

**APPLICANT:** Jorge Pina  
Represented by Elias Rodriguez

**REQUEST:**

A request for a variance to the side yard setback regulations of 1’ is made to construct and maintain a structure, part of which is to be located 4’ from the site’s northern side property line or 1’ into this 5’ side yard setback on property that is developed with a single family use.

**STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION:**

Denial

- While staff recognized that the subject site is slightly irregular in shape, staff concluded that the applicant had not substantiated how this lot could not be developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning district. The approximately 8,200 square foot site is larger in size than the typical 7,500 square feet in the R-7.5(A) zoning district where the size, shape and slope of it has allowed it to be developed with a single family home and detached garage (according to DCAD, an approximately 1,100 square foot home with detached garage) that complied with setbacks and floor area requirements until the recent expansion of the footprint and height of the detached accessory structure.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-7.5(A)(FP)(Single family district 7,500 square feet)(Flood plain)
- North: R-7.5(A)(FP)(Single family district 7,500 square feet)(Flood plain)
- South: R-7.5(A)(FP)(Single family district 7,500 square feet)(Flood plain)
- East: R-7.5(A) (Single family district 7,500 square feet)
- West: R-7.5(A)(FP)(Single family district 7,500 square feet)(Flood plain)

**Land Use:**

The subject site is developed as a single family use – a one-story main building and a two-story accessory structure. The area to the north, east, south, and west are developed with single family uses.

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

**GENERAL FACTS/STAFF ANALYSIS:**

- The request for a variance to the side yard setback regulations of 1’ focuses on maintaining an existing two-story detached accessory structure (with an approximately 750 square foot building footprint) that is proposed to attach to the existing one-story approximately 1,100 square foot single family home with a family room addition. The existing two-story accessory structure is located 4’ from the site’s northern side property line or 1’ into this 5’ required side yard setback.
- A 5’ side yard setback is required in the R-7.5(A) zoning district.
- Section 51A-4.402(b)(3) of the Dallas Development Code states the following with regard to side yard provisions for residential districts:

- In a residential district, a person need not provide a side yard setback for a structure accessory to a residential use if the structure:
  - (A) does not exceed 15 feet in height; and
  - (B) is located in the rear 30 percent of the lot.
- The submitted site plan indicates a structure is located as close a 4' from the site's northern side property line.
- It appears that the two-story detached accessory structure noted by the Board Administrator in his field visit is located in the rear 30 percent of the lot.
- The submitted elevation represents that the height of the existing two-story accessory structure noted in the field to be attached to the one-story main building is 18' in height.
- The representations made on these submitted plans would indicate that the existing detached 2-story accessory structure noted in the field would need to provide a 5' side yard setback since it exceeds 15' in height while it is located in the rear 30 percent of the lot.
- Section 51A-4.209(6)(E)(vii) of the Dallas Development Code states the following with regard to accessory structures for single family uses:
  - Except in the agricultural district, accessory structures are subject to the following regulations:
    - (aa) No person shall rent an accessory structure. For purposes of this section, rent means the payment of any form of consideration for the use of the accessory structure.
    - (bb) No person shall use an advertisement, display, listing, or sign on or off the premises to advertise the rental of an accessory structure.
    - (cc) The height of an accessory structure may not exceed the height of the main building.
    - (dd) The floor area of any individual accessory structure on a lot, excluding floor area used for parking, may not exceed 25 percent of the floor area of the main building.
    - (ee) The total floor area of all accessory structures on a lot, excluding floor area used for parking, may not exceed 50 percent of the floor area of the main building.
- The structures on the property noted by the Board Administrator was a one-story main building/single family home and a two-story accessory structure. The existing two-story accessory structure appeared from the Board Administrator's field visit to exceeds the height of the existing main building.
- In addition, representations on the submitted site plan show that if the two existing structures are not connected by the proposed family room addition, the footprint of the existing detached accessory structure at approximately 750 square feet exceeds 25 percent of the floor area of the main structure at approximately 1,100 square feet.
- The applicant's proposal to connect the two structures on the site with the family room addition and request only a variance to the side yard setback regulations eliminates: 1) the need for the applicant to lower the height of the accessory structure or apply for a variance to the height regulations in order to remedy an accessory structure that exceeds the height of the main building, and 2) the need for the applicant to reduce the building footprint of the accessory structure to become

less than 25 percent of the floor area of the main structure or apply for a variance to the floor area regulations).

- According to DCAD records, the “main improvement” for property addressed at 1455 Traymore Avenue is structure built in 1951 with 1,080 square feet of living/total area, and that “additional improvements” is a 200 square foot detached garage.
- Even though records show that the main improvement/structure on this site was built in the 1950’s, the Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a Google Earth photograph to the Board Administrator showing that the detached garage on the property was one-story in 2008, therefore not deemed a nonconforming structure.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner’s agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The structure in the side yard setback that the applicant is seeking variance is approximately 30 square feet (approximately 1’ in width by approximately 30’ in length).
- The subject site is flat, slightly irregular in shape (approximately 124’ on the north, approximately 119’ on the south, approximately 69’ on the east, and approximately 58’ on the west), and according to the submitted application is 0.188 acres (or approximately 8,200 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
  - If the Board were to grant the request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document– which in this case is a structure is located 1’ from the northern side property line or 1’ into this 5’ required side yard setback.
- Note that the applicant’s request for a variance to the side yard setback regulations will not provide any relief to any existing noncompliance on the site to visual

obstruction regulations or relief to any flood plain regulations that may be related to existing or proposed improvements on the site.

**Timeline:**

November 15, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 4, 2017: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

**BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2018**

**APPEARING IN FAVOR:** Adrian Sanchez, 317 E Jefferson, Dallas, TX  
Jorge Pina, 1455 Traymore Ave, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Narey

I move that the Board of Adjustment, in Appeal No. **BDA 178-007(SL)**, on application of Jorge Pina represented by Elias Rodriguez, **deny** the variance to the side yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such

that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Nelson**

**AYES:** 4 – Nelson, Jones, Narey, Sibley

**NAYS:** 0 -

**MOTION PASSED:** 4– 0 (unanimously)

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**MOTION: Nelson**

I move to adjourn this meeting.

**SECONDED: Sibley**

**AYES:** 5 –, Nelson, Jones, Narey, Sibley, Bartos

**NAYS:** 0 -

**MOTION PASSED:** 5 – 0 (unanimously)

**2:02 P. M.:** Board Meeting adjourned for **January 16, 2018.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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**Note:** For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.