

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, May 21, 2019**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, chair, Jay Narey, regular member, John Jones, regular member, Gary Sibley, alternate member and Phil Sahuc, alternate member

MEMBERS ABSENT FROM BRIEFING: Temeckia Derrough, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, Elaine Hill, Board Secretary, Phil Erwin, Chief Arborist

MEMBERS PRESENT AT HEARING: Cheri Gambow, chair, Jay Narey, regular member, John Jones, regular member, Gary Sibley, alternate member and Phil Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: Temeckia Derrough, regular member

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, Elaine Hill, Board Secretary, Phil Erwin, Chief Arborist

11:07 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 21, 2019** docket.

1:16 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.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel A, April 16 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: May 21, 2019

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA189-050(OA)

BUILDING OFFICIAL'S REPORT: Application of Richard Stoffel for a special exception to the fence standards regulations at 13033 Fall Manor Drive. This property is more fully described as Lot 16, Block E/8432, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 6-foot-high fence in a required front yard, which will require a 2-foot special exception to the fence standards regulations.

LOCATION: 13033 Fall Manor Drive

APPLICANT: Richard Stoffel

REQUEST:

A request for a special exception to the fence standards regulations related to height of 2' is made to maintain a 6' high iron fence and a 6' high iron pedestrian gate in the required front yard on a site 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:

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-7.5(A) (Single family residential 7,500 square feet)
- North: R-7.5(A) (Single family residential 7,500 square feet)
- South: R-7.5(A) (Single family residential 7,500 square feet)
- East: D (A) (Duplex District)
- West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

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

Zoning/BDA History:

There have 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 fence standards regulations related to height of 2' focuses on maintaining a 6' high iron fence and a 6' high iron pedestrian gate in the required front yard on a site developed with a single-family home.
- 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 subject site is zoned R-7.5 (A) which requires a 25' front yard setback.
- The submitted site plan and elevation show the proposal in the front yard setback reaches a maximum height of 6'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 68' in length parallel to Fall Manor Drive and 14' to perpendicular to Fall Manor Drive on the north and south sides of the site in this front yard setback.
 - The proposal is represented as being located approximately 14' from the front property line. (The distance between the fence and the pavement line is approximately 25').
- The Sustainable Development and Construction Department Board of Adjustment Senior Planner conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height along Fall Manor Drive located in front yard setback.
- As of May 10th, no letters have been submitted in opposition and a petition with 13 signatures have been submitted in support to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 6' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

January 22, 2019: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 8, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

April 10, 2019: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th 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.

May 7, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: May 21, 2019

APPEARING IN FAVOR: Richard Stoffel, 13033 Fall Manor Dr., Dallas, TX
Laura Bigi, 13040 Fall Manor, Dallas, TX
Brooks Snyder, 13040 Fall Manor, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Sibley

I move that the Board of Adjustment, in Appeal No. BDA 189-050, on application of Richard Stoffel, **grant** the request of this applicant to maintain a six-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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 and elevation is required.

SECONDED: Jones

AYES: 3 – Narey, Jones, Sibley

NAYS: 2 - Gambow, Sahuc

MOTION FAILED: 3 -2

MOTION #2: Narey

I move that the Board of Adjustment, in Appeal No. BDA 189-050, on application of Richard Stoffel, **deny** the special exception requested by this applicant to maintain a six-foot high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Sahuc

AYES: 4 – Gambow, Narey, Jones, Sahuc

NAYS: 1 - Sibley

MOTION PASSED: 4 -1

FILE NUMBER: BDA189-051(OA)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a variance to the front yard setback regulations at 3710 Knight Street. This property is more fully described as PT LT 10, Block F/1569, and is zoned PD 193 (MF-2), which requires a front yard setback of 20 feet. The applicant proposes to construct and/or maintain a structure and provide a 5-foot front yard setback, which will require a 15-foot variance to the front setback regulations.

LOCATION: 3710 Knight Street

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a variance to the front yard setback regulations of 15’ is made to construct and maintain a three-story single-family structure with a total “slab area” of approximately 1,500 square feet part of which is to be located 5’ from the front yard setback or 15’ into this 20’ front yard setback on a site that is undeveloped.

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:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the variance should be granted because of the restrictive area of the subject site. The site has 3,250 square feet in area where the average lot size of 13 properties in the same PD 193 (MF-2(A)) zoning district is 6,300 square feet. Furthermore, the applicant has shown by submitting a document indicating among other things that the total floor area of the proposed home on the subject site at approximately 3,000 square feet is commensurate to 13 other structures in the same PD 193 (MF-2(A)) zoning district that has an average floor area of approximately 3,700 square feet.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (MF-2(A)) (Planned Development Multi-family district 2)
North: PD 193 (MF-2(A)) (Planned Development Multi-family district 2)
South: PD 193 (MF-2(A)) (Planned Development Multi-family district 2)
East: PD 193 (MF-2(A)) (Planned Development Multi-family district 2)
West: PD 193 (MF-2(A)) (Planned Development Multi-family district 2)

Land Use:

The subject site is undeveloped. The areas to the north, south, west, and east are developed with multi-family, duplex, single-family uses.

Zoning/BDA History:

There have 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 variance to the front yard setback requirement of 15' focuses on constructing and maintaining a three-story single-family structure with a total "slab area" of approximately 1,500 square feet part of which is to be located 5' from the front yard setback or 15' into this 20' front yard setback on a site that is undeveloped.
- The property is located in PD 193 (MF-2(A)) zoning district which requires a minimum front yard setback of 20 feet.
- The submitted plan represents that the structure is proposed to be located as close as 5' from the site's front property line or 15' into the 20' front yard setback.
- The subject site is flat, virtually rectangular in shape, and according to the submitted application, is 0.075 acres (or 3,250 square feet) in area.
- According to DCAD records, there are "no main improvements" or "no additional improvements" for property addressed at 3710 Knight Street.
- The applicant submitted a document indicating that the total size of the proposed home's floor area on the subject site is approximately 3,250 square feet which is smaller than that of 13 other lots that average 6, 300 square feet, In addition, the applicant submitted a document indicating that the total size of the proposed home's floor area on the subject site is approximately 3,000 square feet which is smaller than that of 13 other homes' floor areas she listed of properties in PD 193 (MF-2(A)) zoning. (The average square footage of 13 other properties listed in the applicant's document is approximately 3,700 square feet).
- 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 PD 193 (MF-2(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 PD193 (MF-2(A)) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan 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 a structure that would be located 5' from the front yard setback or 15' into this 20' front yard setback.
- Granting this request for a variance to the front yard setback regulations related to a structure that would be located 5' from the front yard setback or 15' into this 20' front

yard setback would provide no relief to remedy any other encroachment into additional setback requirements including side yard setbacks.

Timeline:

- January 30, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 10, 2019: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th 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.
- May 6, 2019: The applicant submitted additional documentation to staff beyond what was submitted with the original application (see Attachment A).
- May 7, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- May 7, 2019: The Building Inspection Chief Planner during the May 7th staff review meeting discovered that an additional request is needed beyond the requested variance to the front yard setback regulations. The site plan indicates a structure that would be located 5’ from the southwest and northeast side yard setbacks or 5’ into these 10’ side yard setbacks. Since granting a request for a variance to the front yard setback regulations would provide no relief to remedy any other encroachment into additional setback requirements including side yard setbacks, staff contacted the

applicant on May 7, 2019. Staff proposed the applicant two solutions in order to address the side yard encroachment:

- Staff proposed to postpone the public hearing until June's public hearing in order to give the applicant an opportunity to modify the application and add a request for a variance to the side yard setback regulations; and
- Staff proposed the applicant to continue the public process with the current variance request to the front yard setback regulations and address the encroachment into the side yard setbacks at a future public hearing.

The applicant informed staff that he wanted to proceed with the current request and that he will provide a revised site plan to call for 10-foot side yard setbacks. The applicant advised that he was going to provide the site plan on May 8, 2019.

May 9, 2019: The applicant sent an e-mail indicating that the staff who draws their plans is out of town until next week and the revisions she made to correct the side yard encroachment were not the requested changes. The applicant advised that the single-family structure must comply with the PD 193 (MF-2) side yard regulations and that the applicant will comply (see Attachment B).

May 9, 2019: Staff informed the applicant via an email that if the variance request to the front yard setback regulations is approved by the board, the approval would provide no relief to remedy any other encroachment into additional setback requirements including side yard setbacks.

BOARD OF ADJUSTMENT ACTION: May 21, 2019

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm St., Dallas, TX
Stephan Bezson, 4325 Stanhope, Dallas, TX

APPEARING IN OPPOSITION: John Olson, 4038 Holland Ave., Dallas, TX
Russell Rippamonti, 4039 Gilbert Ave., Dallas, TX
Patricia Perez, 4032-4031 Holland Ave., Dallas, TX

MOTION: Sibley

I move that the Board of Adjustment, in Appeal No. BDA 189-051, on application of Rob Baldwin of Baldwin Associates, **deny** the variance to the front 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: Sahuc

AYES: 5 – Gambow, Narey, Sahuc, Jones, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-052(SL)

BUILDING OFFICIAL’S REPORT: Application of Edward F. Heyne, IV, represented by Corey Reinaker, for a variance to the front yard setback regulations at 1828 Kessler Parkway. This property is more fully described as Lot 9, Block 19/3980, and is zoned CD 13, which requires a front yard setback of 72 feet. The applicant proposes to construct and/or maintain a structure and provide a 21-foot front yard setback, which will require a 51 foot variance to the front yard setback regulations.

LOCATION: 1828 Kessler Parkway

APPLICANT: Edward F. Heyne IV
Represented by Corey Reinaker

REQUESTS:

The following requests have been made on a site developed with a single-family home that, according to DCAD, was constructed in the mid 50’s:

- a variance to the front yard setback regulations of up to 51’ is requested to construct and maintain an addition to the existing structure that would be as close as 21’ from the front property line or as much as 51’ into the required site’s 72’ front yard setback;
- a variance to the front yard setback regulations of up to 45’ is requested to address the existing structure that is a nonconforming structure and that is as close as 27’ from the front property line or as much as 45’ into the site’s 72’ 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:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the lot's restrictive area caused by an unusually large 72' front yard setback established by the equal of the average of the front yards of the houses on contiguous lots to the east and west and slope precludes the applicant from developing it in a manner commensurate with the development upon other parcels of land that have more typical front yard setbacks, and are flat/without slope on similarly-zoned CD 13 (Subarea 3) lots. The applicant's representative has submitted a document indicating that that the total "maximum conditioned space" of the home on the subject site with the addition is approximately 2,500 square feet which is smaller than that of 22 other homes he listed of properties in the same CD 13 (Subarea 3) zoning. (The average square footage of 22 other properties listed in the applicant's document is approximately 3,300 square feet).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CD 13 (Subarea 3) (Conservation District)
<u>North:</u>	CD 13 (Subarea 3) (Conservation District)
<u>South:</u>	CD 13 (Subarea 3) (Conservation District)
<u>East:</u>	CD 13 (Subarea 3) (Conservation District)
<u>West:</u>	CD 13 (Subarea 3) (Conservation District)

Land Use:

The subject site is developed with a single-family home that according to DCAD was constructed in 1983. The area to the north is undeveloped, and the areas to the 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 requests for variances to the front yard setback regulations focus on constructing and maintaining an addition to the existing structure on the site that according to DCAD was constructed in the mid 50's and addressing this structure that is a nonconforming structure both of which are either located/to be located in this site's 72' front yard setback.
- The subject site is zoned CD 13 (Subarea 3).
- CD 13 states that the minimum front yard must equal the average of the front yards of the houses on contiguous lots.

- The applicant has submitted a document/site plan that represents the location and setbacks of the houses to the east and west of the subject site. This site plan represents that the house to the east has a front yard setback of 26' and the house to the west has a front yard setback of 118'.
- The submitted plan represents almost the entire existing home and the entire proposed addition is located in the 72' front yard setback.
- DCAD records indicate "main improvement" for the property at 2016 Kessler Parkway is a structure built in 1955 with 1,862 square feet of living/total area, and with "additional improvements" of a 549 square foot detached garage.
- While the existing single-family home is located in what is now a 72' front yard setback, it is assumed that this structure is a nonconforming structure because records show that the main improvement/structures on this site were built in the 1950's.
- Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned R-7.5(A) where the typical lot size is 7,500 square feet and where the front yard setback was 25'.
- 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 owner has informed staff that he has chosen to seek variance to the front yard setback regulations for the proposed addition, and the nonconforming aspect of the existing nonconforming structure in the front yard setback.
- The applicant's representative has submitted a document indicating that that the total "maximum conditioned area" of the home with the addition on the subject site is approximately 2,500 square feet (approximately 1,900 of existing home with approximately 600 square feet of addition). This square footage is smaller than that of 22 other homes he listed of properties in the same CD 13 (Subarea 3) zoning. (The average square footage of 22 other properties listed in the applicant's document is approximately 3,300 square feet).
- The applicant has submitted a topographic representation of the site indicating a slope in approximately the eastern half of the subject (see Attachment A).
- The subject site is sloped, irregular in shape, and approximately 30,900 square feet in area. Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned R-7.5(A) where the typical lot size is 7,500 square feet and where the front yard setback was 25'. Now this site has a front yard setback of 72'.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances 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 variances are 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 CD 13 (Subarea 3) zoning classification.
- The variances 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 CD 13 (Subarea 3) zoning classification.
- If the Board were to grant this request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which is a structure located as close as 21’ from the site’s front property line or 51’ into the required 72’ front yard setback.

Timeline:

- March 1, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 8, 2019: 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 May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th 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.
- May 2, 2019 The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- May 7, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction

Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: May 21, 2019

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Sibley

I move that the Board of Adjustment, in Appeal No. BDA 189-052, on application of Edward F. Heyne, IV, represented by by Corey Reinaker, **grant** the variance to the front yard setback regulations contained in the Dallas Development Code, subject to the following condition:

- Compliance with the submitted site plan is required.

SECONDED: Sahuc

AYES: 5 – Gambow, Narey, Sahuc, Jones, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-043(OA)

BUILDING OFFICIAL’S REPORT: Application of Mirna Badillo, represented by Santos Martinez, for a special exception to the minimum side yard setback requirements to preserve an existing tree at 2831 Jordan Valley Road. This property is more fully described as Lot 1, Block A/8789, and is zoned A(A), which requires a side yard setback of 20 feet. The applicant proposes to construct and/or maintain structure and provide a 3-foot 4-inch side yard setback, which will require a 16-foot 8-inch special exception to the minimum side yard setback requirements to preserve an existing tree.

LOCATION: 2831 Jordan Valley Road

**APPLICANT: Mirna Badillo
Represented by Santos Martinez**

April 16th public hearing notes:

- The Sustainable Development and Construction Department Board of Adjustment Senior Planner circulated an email from the applicant’s representative to the Board at the briefing requesting that action on this application be delayed until the next Panel A hearing in May (see Attachment B).

REQUEST:

A request for a special exception to the minimum side yard requirements to preserve existing trees of 16’ 8” is made to maintain an approximately 6,250 square foot “stable” structure which is located 3’ 4” from the side property line or 16’ 8” into the 20’ side yard setback on a site that is developed with a “commercial stable” use.

STANDARD FOR A SPECIAL EXCEPTION TO THE MINIMUM SIDE YARD REQUIREMENTS TO PRESERVE AN EXISTING TREE:

Section 51(A)-4.402(d) of the Dallas Development Code specifies that the board may grant a special exception to the minimum side yard requirements in this section to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

STAFF RECOMMENDATION:

Denial

Rationale:

- The City of Dallas Chief Arborist has indicated that that the congregation of trees are not worthy of preservation. In addition, the applicant had not substantiated how the requested special exception is compatible with the character of the neighborhood, and how the value of the surrounding properties would not be adversely affected.

BACKGROUND INFORMATION:

Zoning:

- Site: A (A) (Agricultural District)
- North: A (A) (Agricultural District)
- South: A (A) (Agricultural District)
- East: R-10 (A) (Single-family district 10,000 square feet)
- West: A (A) (Agricultural District)

Land Use:

The subject site is developed with a “commercial stable” use. The areas to the north, south, east, and west are developed with agricultural uses and 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 minimum side yard requirements to preserve existing trees of 16’ 8” focuses on maintaining an approximately 6,250 square foot “stable” structure located 3’ 4” from the side property line or 16’ 8” into the 20’ side yard setback on a site that is developed with a “commercial stable” use.
- The property is located in an A (A) (Agricultural District) zoning district which requires a minimum side yard of 20 feet.
- The submitted site plan indicates a “stable” structure located 3’ 4” from the north side property line or 16’ 8” into this 20’ side yard setback, and several trees within the site.
- The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A). The memo stated that the arborist staff has investigated the site and the trees and concluded based on the observed circumstances of construction and site activities at the building location, the congregation of trees are not worth of preservation.
- The applicant has the burden of proof in establishing the following:
 - Whether the requested special exception is compatible with the character of the neighborhood.
 - Whether the value of surrounding properties will be adversely affected.
 - Whether the tree is worthy of preservation.
- If the Board were to grant the special exception 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 that is located 3’ 4” from the site’s side property line (or 16’ 8” into this 20’ side yard setback).

Timeline:

February 14, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 11, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 13, 2019: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 5th 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.”

April 2, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

April 4, 2018: The City of Dallas Chief Arborist emailed the Board Administrator information regarding this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: May 21, 2019

APPEARING IN FAVOR: Santos Martinez, 52 Cheerful Way, Angel Fire, NM

APPEARING IN OPPOSITION: No one

MOTION: Narey

I move that the Board of Adjustment, in Appeal No. BDA 189-043, on application Mirna Badillo, represented by Santos Martinez, **grant** the request of this applicant for a 16-foot 8-inch special exception to the minimum side yard setback requirements to preserve an existing tree, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception is compatible with the character of the surrounding neighborhood, the value of surrounding properties will not be adversely affected, and the tree is worthy of preservation.

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 is required.

SECONDED: Sahuc

AYES: 5 – Gambow, Derrough, Jones, Sibley Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

2:12 P. M.: Board Meeting adjourned for **May 21, 2019.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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