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CITY SECRETARY
DALLAS, TEXAS

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
TUESDAY, NOVEMBER 16, 2021**

MEMBERS PRESENT AT BRIEFING: Dave Neumann, Chair, regular member, Jay Narey, regular member, Sarah Lamb, regular member, and Lawrence Halcomb, regular member and Thomas Fleming, alternate member

MEMBERS ABSENT FROM BRIEFING: None

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Anna Holmes and Daniel Moore, Asst. City Attys., Pamela Daniel, Senior Planner, LaTonia Jackson, Board Secretary, Robyn Gerard, Senior Public Information Officer, Charles Trammell, Development Code Specialist, Phil Erwin, Arborist, and Andreea Udrea, Assistant Director

MEMBERS PRESENT AT HEARING: Dave Neumann, Chair, regular member, Jay Narey, regular member, Sarah Lamb, regular member, and Lawrence Halcomb, regular member and Thomas Fleming, alternate member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Anna Holmes and Daniel Moore, Asst. City Attys., Pamela Daniel, Senior Planner, LaTonia Jackson, Board Secretary, Robyn Gerard, Senior Public Information Officer, Charles Trammell, Development Code Specialist, Phil Erwin, Arborist, and Andreea Udrea, Assistant Director

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 16, 2021** docket.

1:01 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, October 19, 2021 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: November 16, 2021

MOTION: Neumann

Approval of the Board of Adjustment Panel A, October 19, 2021 public hearing minutes.

SECONDED: Lamb

AYES: 5 – Lamb, Halcomb, Narey, Fleming, Neumann

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Approval of the 2022 Board of Adjustment Calendar

BOARD OF ADJUSTMENT ACTION: November 16, 2021

MOTION: Neumann

Approval of the 2022 Board of Adjustment Calendar with July meeting changing to July 19th for Panel A

SECONDED: Lamb

AYES: 5 – Lamb, Halcomb, Narey, Fleming, Neumann

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-106(PD)

BUILDING OFFICIAL’S REPORT: Application of Carlos Navarrete represented by JACS Construction for a variance to the front yard setback regulations at 3015 Puget Street. This property is more fully described as Lot 3 in City Block 16/7126 and is zoned an R-5(A) Single Family District, which requires a front yard setback of 20 feet. The applicant proposes to construct a one-story addition to the existing single-family dwelling that provides the encroachment into both front yard setbacks, remodel the existing roofline and siding, and provide a minimum eight-foot-seven-inch front yard setback along Toronto Street and Puget Street, which will require an eleven-foot-five-inch variance to the front yard setback regulations.

LOCATION: 3015 Puget

APPLICANT: Carlos Navarrete represented by JACS Construction

REQUESTS:

A request for a variance to the front yard setback regulations of eleven feet five inches is made to construct and maintain an addition to an existing single-family dwelling and remodel the

existing roofline within the subject site's 20-foot front yard setbacks on a site that is currently developed and situated along a corner lot with two front yards and an unimproved alley.

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.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
 - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (e) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site being situated on a corner lot with two front yards determines this property has an unnecessary hardship and is unable to be developed in

a manner commensurate with the development upon other parcels of land with the same R-5(A) zoning classification. Additionally, per State Law/HB 1475 Subsection (c) and evidence (**Attachments A and B**) submitted by the representative, staff believes that compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur.

BACKGROUND INFORMATION:

Zoning:

Site: R-5(A) Single Family District
North: R-5(A) Single Family District
South: CR Community Retail District
East: R-5(A) Single Family District
West: R-5(A) Single Family District

Land Use:

The subject site is developed with a single-family dwelling. Surrounding properties to the west and east are developed with single-family dwellings while surrounding properties to the north and south are undeveloped.

Zoning/BDA History:

There have been no related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on constructing and maintaining an addition along the southern portion of the existing single-family dwelling unit that happens to be situated along a front yard (Puget Street). The lot is situated along the intersection of Puget Street and Toronto Street, which provides two front yards along both corridors. Additionally, the location of the subject site is unique since the existing residential dwelling and neighborhood lies adjacent to a CR Community Retail District to the south with an unimproved alley acting as the sole separation between the two. Further Section 51A-4.401(a)(6) regulates that if a blockface is divided by two or more zoning districts, the front yard for the entire blockface must comply with the requirements of the district with the greatest front yard requirement. Since the subject site is zoned an R-5 Single Family District and requires a 20-foot front yard setback and the CR Community Retail District requires a 15-foot front yard setback, the most restrictive setback of 20-feet must be maintained along both frontages to ensure continuity of the block. Lastly, since the applicant is proposing to remodel consisting of a reroof and new siding to the existing structure which currently poses an encroachment of 10-feet-five-inches into the front yard along Puget Street and eleven-foot-five-inches into the front yard along Toronto Street, a variance to the front yard setbacks for both frontages is required to update the existing structure. The addition is located within the R-5(A) District yard, lot, and space regulations and requires no relief. The variances will allow for the renovation of the existing structure.

Structures on lots zoned an R-5(A) Single Family District must have a minimum front yard setback of 20 feet. A site plan has been submitted denoting the existing dwelling unit with the proposed addition located eight-feet-seven-inches from the front property line along Puget Street and located twelve-feet-seven-inches from the front property line along Toronto Street. Also, the site plan depicts an existing approximately 546-square-foot, one-story dwelling unit with an approximately 700-square-foot, one-story proposed addition for approximately 1,246-square feet of floor area with a midpoint height of 13-feet-ten-inches. The portion of the addition fronting along Puget Street is not proposed to encroach into the front yard setback. Rather the addition proposes to provide a front yard setback of 20 feet and one inch.

The subject site is not irregular in shape and is approximately 5,096 square feet in lot area. An R-5(A) zoning district requires lots to have a minimum lot size of 5,000 square feet. However, the applicant has provided evidence (**Attachment A and B**) that approximately five lots within the vicinity of the subject site maintain an average lot size of 5,831 square feet. Additionally, the same evidence offers that six lots within the vicinity of the subject site provide an average floor area of 1,744 square feet. Considering both deficits, the subject site contains a delta of 735 feet for the lot size and 1,198 square feet of floor area in comparison to similar homes within the same zoning district.

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-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-5(A) zoning classification.

Additionally, the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
- Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
- Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

- Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- The municipality consider the structure to be a nonconforming structure.

As of November 5, 2021, no letters have been submitted in support of or in opposition of the request.

If the board were to grant this front yard setback variance request and impose the submitted site plan as a condition, development would be limited to what is shown on this document. Granting this variance request will not provide any further relief from the Dallas Development Code regulations.

Timeline:

- Sept. 23, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- October 15, 2021: The Board Senior Planner 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 2021 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.
- October 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted in conjunction with this application.
- November 4, 2021: Documentary evidence was provided by the representative (**Attachments A & B**).

BOARD OF ADJUSTMENT ACTION: November 16, 2021

APPEARING IN FAVOR: John Cangiano 6804 Briar Rd. Azle, TX

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 201-106, on application of Carlos Navarette, represented by JACS Construction, **grant** the request of this applicant for a 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: Halcomb

AYES: 5 – Lamb, Halcomb, Narey, Fleming, Neumann

NAYS: 0 –

MOTION PASSED: 5 - 0 (unanimously)

FILE NUMBER: BDA201-110(PD)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin of Baldwin Associates for a variance to the side yard setback regulations at 3860 Shorecrest Drive. This property is more fully described as Lot 16A in City Block 5068 and is zoned an R-10(A) Single Family District, which requires a side yard setback of 6 feet. The applicant proposes to construct and maintain an addition and maintain an existing encroachment of the single-family dwelling unit and provide a four-foot-one-inch side yard setback, which will require a one-foot-eleven-inch variance to the front yard setback regulations.

LOCATION: 3860 Shorecrest Drive

APPLICANT: Rob Baldwin of Baldwin Associates

REQUESTS:

A request for a variance to the side yard setback regulations of one foot eleven inches is made to construct and maintain an addition and maintain an existing portion of the structure along an existing residential dwelling within the subject site’s six-foot side yard setback on a site that is currently developed with a single-family dwelling and situated along an alley to the west and Shorecrest Drive to the north.

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:

- (D) 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;
- (E) 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
- (F) 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.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (f) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (g) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
 - (h) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (i) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (j) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- While the property containing 21,000 SF is larger than the minimum standard of 10,000 SF, the site is slightly sloped and partially within a floodplain.
- Per evidence (**Attachment A & B**) submitted and State Law/HB1475 Subsection B the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code. DCAD lists the improvement value of the existing structure at \$225,180.00. To comply with the R-10(A) Single Family District regulation would require the removal of bedrooms, baths, closets and exceed more than 50% of the value of the DCAD

improvement value of the home to demolish and relocate the existing portion of the structure.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) Single Family District
North: R-10(A) Single Family District
South: R-10(A) Single Family District
East: R-10(A) Single Family District
West: R-10(A) Single Family District

Land Use:

The subject site and surrounding properties to the west, south, and east are developed with single-family dwelling units while the property to the north is developed with a public park (Bachman Creek Greenbelt).

Zoning/BDA History:

There has been one related board case in the vicinity within the last five years.

1. **BDA201-090:** On October 19, 2021, the Panel A, Board of Adjustments granted a special exception to the fence height and fence standards regulations to construct a five-foot six-inch-high fence in a required front yard using a prohibited material, which will require a one-foot six-inch special exception to the fence height regulations and a special exception to the fence standards regulations regarding materials at 8627 Lakemont Drive

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on constructing and maintaining an addition and maintain an existing portion of the structure along an existing residential dwelling unit within the subject site's six-foot side yard setback on a site that is currently developed with a single-family dwelling unit and situated along an alley to the west and Shorecrest Drive. The portion of the structure that encroaches along the southern façade of the existing residential dwelling exists within the confines of the one-story single-family structure and contains portions of the master bedroom, the master en-suite with access to an outdoor patio, master closet, secondary bedroom, and an outdoor storage closet along the southern façade of the structure fronting along an unimproved alley. The existing encroachment is one-foot-eleven-inches into the required six-foot side yard setback and therefore provides a four-foot-one-inch side yard setback. Additionally, a second story addition is proposed atop of the portion of the first story that currently encroaches into DCAD, Dallas County Appraisal District reflect a one-story structure with an approximate total floor area of 2,977 square feet with an outdoor living area/covered patio built in 1948. The applicant proposes the second story addition to provide a total floor area of 4,385 square feet which proposes to provide an addition of 1,276 square feet of floor area to the single-family dwelling unit.

Structures on lots zoned an R-10(A) Single Family District must have a minimum side yard setback of six feet. A site plan has been submitted denoting the portion of the existing single-family structure and the proposed addition to be located four-feet-one-inch from the side property line along the unimproved alley. Additionally, the site plan depicts an approximately 400-square-foot detached carport encroaching four feet into the required side yard setback, however, the applicant has provided notation that the existing structure is proposed to be demolished and will therefore not require any action from the board.

An R-10(A) zoning district requires lots to have a minimum lot size of 10,000. The subject site is slightly irregular in shape and is approximately 21,000 square feet in lot area which is twice the size of lots within the same zoning district. However, the property does contain an approximately ten-foot-wide drainage ditch along the portion of the front yard fronting Shorecrest Drive. Additionally, a retaining wall runs along the drainage ditch which was not observed within the portion of the drainage ditch on adjacent properties. Thus, observance of the retaining causes staff to believe that the subject property may contain topography changes.

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-10(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-10(A) zoning classification.

Additionally, the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

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

As of November 5, 2021, no letters have been submitted in support of nor in opposition of the request.

If the board were to grant this side yard setback variance request and impose the submitted site plan as a condition, development would be limited to what is shown on this document. Granting this variance request will not provide any relief to the Dallas Development Code regulations.

Timeline:

- Sept. 24, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.
- October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- October 14, 2021: The Board Senior Planner 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 2021 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.
- October 26, 2021: Documentary evidence was provided by the representative (**Attachments A & B**).
- October 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted in conjunction with this application

BOARD OF ADJUSTMENT ACTION: November 16, 2021

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 201-110, on application of Anthony Kyle Noonan and Courtney Kerr, represented by Rob Baldwin of Baldwin Associates, for a variance to the side yard setback regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Halcomb

AYES: 5 – Lamb, Halcomb, Narey, Fleming, Neumann

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-104(PD)

BUILDING OFFICIAL’S REPORT: Application of Daymond Lavine for a special exceptions to the single-family regulations at 615 S. Moore Street. This property is more fully described as Lot 18 in City Block 30/3591 and is zoned an R-5(A) Single Family District, which limits the number of dwelling units on a lot to one and requires that a single-family dwelling use may be supplied by not more than one electrical utility service and metered by not more than one electrical meter. The applicant proposes to construct and maintain an accessory dwelling unit (for rent) on a lot with an existing single-family use and to have more than one electrical utility service or electrical meter, which requires special exceptions to the single-family zoning use regulations.

LOCATION: 615 S. Moore Street

APPLICANT: Daymond Lavine

REQUESTS:

The following request for special exceptions to the single-family use regulations are made to authorize more than one electrical utility service or electrical meter on a site with a single-family use and permit a second dwelling unit (for rent) on one single-family lot.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AN ACCESSORY DWELLING UNIT ON ONE LOT:

(aa). The board may grant a special exception to authorize a rentable accessory dwelling unit in any district when, in the opinion of the board, the accessory dwelling unit will not adversely affect neighboring properties.

(bb). If a minimum of one additional off-street parking space is not provided, the board shall determine if that will create a traffic hazard. The board may require an additional off-street parking space be provided as a condition of granting this special exception.

(cc). In granting a special exception under this subparagraph, the board shall require the applicant to:

(I). deed restrict the subject property to require owner-occupancy on the premises; and

(II). annually register the rental property with the city's single-family non-owner occupied rental program.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE MORE THAN ONE ELECTRICAL UTILITY SERVICE OR MORE THAN ONE ELECTRICAL METER:

The board may grant a special exception to authorize more than one electrical utility service or more than one electrical meter for a single-family use on a lot in a single-family zoning, duplex, or townhouse district when, in the opinion of the board, the special exception will not:

1. be contrary to the public interest;
2. adversely affect neighboring properties; and
3. be used to conduct a use not permitted in the zoning district.

STAFF RECOMMENDATION FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE MORE THAN ONE ELECTRICAL UTILITY SERVICE OR MORE THAN ONE ELECTRICAL METER:

No staff recommendation is made on this or any request for a special exception to authorize more than one electrical utility service or more than one electrical meter for a single-family use on a lot in a single-family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the standards described above are met.

STAFF RECOMMENDATION FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AN ACCESSORY DWELLING UNIT ON ONE LOT:

No staff recommendation is made on this or any request for a special exception to authorize an accessory dwelling unit since the basis for this type of appeal is *when in the opinion of the board*, the standards described above are met.

BACKGROUND INFORMATION:

Zoning:

- Site: R-5(A) (Single Family District)
North: R-5(A) (Single Family District)
West: R-5(A) (Single Family District)
South: R-5(A) (Single Family District)
East: R-5(A) (Single Family District)

Land Use:

The subject site and adjacent site to the north are developed with a single-family uses while surrounding properties to the east, south, and west are undeveloped lots.

Zoning/BDA History:

There have been no related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The site is zoned an R-5(A) Single Family District and contains an existing original two-story dwelling unit which fronts on S. Moore Street. In this district, one dwelling unit is allowed per lot and only permitted one electrical or utility meter. The purpose of the request for special exceptions to the single-family use regulations is to construct an accessory dwelling unit structure for rent proposed along the rear of the site and to authorize more than one electrical utility service or electrical meter.

The site is developed with an approximately 3,051-square-foot, two-story single-family structure permitted for construction on October 7, 2019 and a green tag for final inspection on April 29, 2021, according to internal City records.

The site plan and elevation plan provided for the requests depict the proposed ADU situated approximately six feet from the rear of the existing two-story single-family dwelling. The proposed ADU is an approximately 896-square-foot, one-story detached structure containing a rooftop patio with a maximum height of nine-feet-and-three-quarter inches.

As of November 5, 2021, no letters had been submitted in support of the requests nor in opposition of the requests.

The applicant has the burden of proof in establishing that the proposed ADU for rent to be constructed, installed, and/or maintained on the site will not adversely affect neighboring properties. In granting a special exception under this subparagraph, the board shall require the applicant to: (I). deed restrict the subject property to require owner-occupancy on the premises; and (II). annually register the rental property with the city's single family non-owner occupied rental program.

Additionally, the applicant has the burden of proof in establishing that the proposed additional electrical meter to be constructed, installed, and/or maintained on the site will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties, and 3) not be used to conduct a use not permitted in the City's Development Code.

If the board were to grant the requests for special exceptions to the single-family use regulations to allow the accessory dwelling unit for rent and a second electrical utility service or electrical meter at the site, the only items being authorized are a second subordinate dwelling unit and the installation of the second electrical utility service or electrical meter, as shown on the submitted site plan. Any other items shown on the site plan are subject to compliance with all other regulations of the Dallas Development Code, as amended, to obtain building permits.

Timeline:

September 19, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 14, 2021: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

October 15, 2021: The Board Senior Planner 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 2021 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.

October 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Building Inspection Chief Planner, the Interim Assistant Director of Current Planning, and the Assistant City Attorney to the board.

No review comment sheets were submitted in conjunction with this application

BOARD OF ADJUSTMENT ACTION: November 16, 2021

APPEARING IN FAVOR: Daymond Lavine 615 S. Moore St. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION#1: Halcomb

I move that the Board of Adjustment, in request No. BDA 201-104, on application of Daymond E. Lavine and Stanley Coleman, **grant** the request to construct and maintain an accessory dwelling unit on a site developed with a single family structure as a special exception to the single family use regulations requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring properties.

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.

The property must be deed restricted to require that the property owner reside in the main structure or the accessory dwelling unit if one dwelling unit is used as rental accommodations.

SECONDED: Narey

AYES: 5 – Lamb, Halcomb, Narey, Fleming, Neumann

NAYS: 0-

MOTION PASSED: 5-0 (unanimously)

MOTION#2: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 201-104, on application of Daymond E. Lavine and Stanley Coleman, **grant** the request to authorize more than one electrical utility service or more than one electrical meter because our evaluation of the property and the testimony shows that the special exception is not contrary to the public interest, it will not adversely affect neighboring properties, and it will not be used to conduct a use not permitted in the zoning district.

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: Halcomb

AYES: 5 – Lamb, Halcomb, Narey, Fleming, Neumann

NAYS: 0-

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA201-112(PD)

BUILDING OFFICIAL'S REPORT: Application of Rob Baldwin of Baldwin Associates for a special exception to the fence height regulations at 5518 Winston Court. This property is more fully described as Lot 1A, Block B/5592, and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct an eight-foot-high fence, which will require a four-foot special exception to the fence regulations.

LOCATION: 5518 Winston Court

APPLICANT: Rob Baldwin of Baldwin Associates

REQUEST:

The applicant proposes a fence of eight-feet-in-height, constructed of chopped stone walls, chopped stone columns, wrought iron fence panels, and wrought iron electric gates fronting

along Winston Court at a length of 288 feet and one-half inch and fronting along Hollow Way Road at a length of 230 feet and one-quarter inch. The portion of the fence along the eastern half of the subject site proposes a depth of approximately 84 feet and ten inches which is partially proposed within the 40-foot front yard setback. The site is currently developed with a two-story single-family dwelling use, contains 11 accessory structures, and is currently under construction with an addition and remodel.

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-1ac(A) (Single Family District)
North: R-1ac(A) (Single Family District)
East: R-1ac(A) (Single Family District)
South: R-1ac(A) (Single Family District)
West: R-1ac(A) (Single Family District)

Land Use:

The subject site is currently developed with a single-family dwelling unit. Surrounding properties to the north, east, south, and west are also developed with single-family uses.

Zoning/BDA History:

There have been eleven related board cases in the vicinity within the last five years.

1. **BDA167-007:** On January 17, 2017, the Panel A, Board of Adjustment granted a request for a special exception to the fence standards to construct and maintain a nine-foot-high fence in a required front yard, which will require a five-foot special exception at 9820 Meadowbrook Drive.
2. **BDA167-051:** On May 16, 2017, the Panel A, Board of Adjustments granted special exceptions to the fence standards to construct and maintain an eight-foot-two-inch-high fence and construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line at 5814 Watson Avenue.
3. **BDA178-003:** On January 16, 2018, the Panel A, Board of Adjustments granted special exceptions to the fence standards and visual obstruction regulations to construct and

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 at 9025 Douglas Avenue.

4. **BDA178-006:** On January 16, 2018, the Panel A, Board of Adjustment granted a variance to the front yard setback regulations 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 at 5243 Park Lane.
5. **BDA178-017:** On February 20, 2018, Panel A, Board of Adjustment granted a special exception to the fence standards regulations and a special exception to the visual obstruction regulations to construct and maintain a six-foot-six-inch high fence in a required front yard which will require a 2 foot 6 inch special exception to the fence standards regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations at 5530 Falls Road.
6. **BDA178-019:** On February 22, 2018, Panel C, Board of Adjustment granted a special exception to the fence standards to construct and maintain a ten-foot-high fence in a required front yard, which will require a six-foot special exception in a required front yard at 5539 Falls Road.
7. **BDA189-118:** On October 23, 2019, the Panel B, Board of Adjustments granted a special exception to the fence standards regulations and visual obstructions regulations to construct and maintain construct and/or maintain a 5-foot-6-inch-high fence, which will require a 1-foot-6-inch special exception to the fence at 5807 Park Lane.
8. **BDA167-003:** On June 23, 2020, the Panel B, Board of Adjustments granted a special exception to the fence regulations to construct and maintain a 10-foot-high fence in a required front yard, which will require a 6-foot special exception to the fence standards, and to construct and 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 at 9520 Hathaway Street.
9. **BDA190-052:** On June 23, 2020, Panel A, Board of Adjustments granted a special exception to the fence height regulations to construct and maintain a six-foot-high fence in a required front yard, which will require a two-foot special exception at 5830 Falls Road.
10. **BDA201-042:** On May 19, 2021, Panel B, Board of Adjustments granted a request for a special exception to the fence height regulations to construct an eight-foot seven-inch-high fence in a required front yard, which will require a four-foot seven-inch at 5535 Park Lane.

11. **BDA201-105:** On November 15, 2021, Panel C, Board of Adjustments will hear a request for a special exception to the fence height regulations construct and maintain an eight-foot-high fence, which will require a four-foot special exception at 5532 Park Lane.

GENERAL FACTS/STAFF ANALYSIS:

The request for a special exception to the fence height regulations of four feet is made to construct and maintain an eight-foot-high fence which will require a four-foot special exception.

According to Dallas County Appraisal District records, the property is currently developed with an approximately 8,891-square-foot, two-story single-family dwelling. Additionally, the property contains approximately 13,893-square-feet of accessory uses consisting of: a porte cochere of 345-square feet, three detached garages with approximately 10,227 square feet, a cabana with 434 square feet, four storage spaces/buildings totaling 1,833 square feet, an outdoor living area of 364 square feet, detached quarters with 1,172 square feet, and a pool. The applicant proposes an eight-foot-high fence constructed of chopped stone walls, 12 chopped stone columns along Hollow Way Road, 16 chopped stone columns along Winston Court, and four chopped stone columns along the eastern portion of the site, wrought iron fence panels, two wrought iron electric gates for vehicular access fronting along Winston Court, two wrought iron electric gates for vehicular access along Hollow Way Road, and two wrought iron electric gates for pedestrian access along both Winston Court and Hollow Way Road.

The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The subject site is zoned an R-1ac(A) Single Family District and requires a minimum front yard setback of 40 feet. Furthermore, the site has two front yards because while the Hollow Way Road frontage is technically the longer side for the lot, the building site is composed of two lots, making the Hollow Way Road frontage the shorter of the two sides.

The following information is shown on the submitted site plan:

- The proposed fence with access gates along Winston Court and Hollow Way Road encroach 100 percent into the required 40-foot front yard setbacks along both frontages to the south and west as well as along the eastern portion of the subject site are setback 34 feet.
- The property contains two front yards along Winston Court and Hollow Way Road. Due to continuity of block face, the 40-foot front yard setback must be maintained for both front yards. Thus, the portion of the fence proposed along both frontages are located at or along the property lines.
- Along Winston Court the fence is proposed at a length of 288-feet and one half-inch. Along Hollow Way Road the fence is proposed at a length of 230 feet and one-quarter inch.

As of November 5, 2021, no letters have been submitted in opposition of or support of the request.

The applicant has the burden of proof in establishing that the special exception to the fence standards related to the height of eight feet located on Winston Court and Hollow Way Road will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to the height would require the proposal exceeding four feet-in-height in the front yard setback located along both frontages to be maintained in the locations and height as shown on the site plan and elevation.

Timeline:

Sept. 28, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.

October 15, 2021: The Board Senior Planner 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 2021 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.

October 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted with these requests

BOARD OF ADJUSTMENT ACTION: November 16, 2021

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. Ste. B Dallas, TX
Daniel Zipperlen 5518 Winston Court Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 201-112, on application of Charles David Wood, Jr., represented by Rob Baldwin, Baldwin Associates, **grant** the request of this applicant to construct and/or maintain an eight-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: Narey

AYES: 5 – Lamb, Halcomb, Narey, Fleming, Neumann

NAYS: 0-

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA201-113(JM)

BUILDING OFFICIAL’S REPORT: Application of Cabana Development LLC represented by Philip Kingston to appeal the decision of the administrative official at 899 N. Stemmons Freeway. This property is more fully described as Blocks 401, 409, and 3/409, and is zoned Subarea 1J within Planned Development District No. 621, which requires that the building official shall not issue a permit or certificate of occupancy if the building official determines that the use would be operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the issuance of a building permit and certificate of occupancy.

LOCATION: 899 N. Stemmons Freeway

APPLICANT: Cabana Development LLC represented by Philip Kingston

REQUEST:

A request is made to appeal the decision of the administrative official, more specifically, the Building Official’s authorized representative, the Assistant Building Official in Development Services, to deny an application for a Certificate of Occupancy for a hotel use, which does not comply with other regulations (park land dedication ordinance).

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

STAFF RECOMMENDATION:

Staff does not make a recommendation on appeals of the decisions of administrative officials.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	Subdistrict J, PD No. 621
<u>North:</u>	Subdistrict 1, PD No. 621
<u>East:</u>	Subdistricts I-2 and I-3, PD No. 193
<u>South:</u>	Subdistrict 2, PD No. 621
<u>West:</u>	Subdistrict 1, PD No. 621

Land Use:

The subject site is developed with a vacant commercial structure being redeveloped with a hotel use and other mixed-uses. Surrounding land uses include office/showroom warehouses to the east and north; Stemmons Freeway to the east with hotel, office, multifamily, and a cinema; and a transportation use (bus terminal) to the south.

Zoning/BDA History:

There has been one relevant zoning case at the subject site and no board cases in the vicinity within the last five years.

1. **Z178-314:** On June 12, 2019, the City Council adopted the creation of Subdistrict J within PD No. 621 to allow for the restoration of an existing building to be occupied as a hotel use, and to allow for a future mixed-use development to include multifamily and retail and personal service uses. (*The subject site.*)

GENERAL FACTS/STAFF ANALYSIS:

The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

Timeline:

- | | |
|-------------------|--|
| October 1, 2021: | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| October 12, 2021: | The Board of Adjustment Chief Planner randomly assigned this case to Board of Adjustment Panel A. |
| October 19, 2021: | The Board of Adjustment Chief Planner emailed the applicant the following information: <ul style="list-style-type: none">• 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the |

November 5, 2021 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;
- the appeal of a decision of an administrative official procedure outline; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted in conjunction with this application.

November 5, 2021: The City's attorney submitted additional evidence for consideration (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: November 16, 2021

APPEARING IN FAVOR: Philip Kingston 5901 Palo Pinto Dr. Dallas, TX
Raj Sharma 899 N. Stemmons Fwy. Dallas, TX

APPEARING IN OPPOSITION: Andrew Spaniol 1500 Marilla St. Dallas, TX
Megan Wimer 320 E. Jefferson Dallas, TX

MOTION: Lamb

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. BDA 201-113, on application of Cabana Development LLC, represented by Philip Kingston of Kingston Consulting, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **affirm** the decision of the administrative official and **deny** the relief requested by the applicant.

SECONDED: Halcomb
AYES: 3 – Halcomb, Lamb, Neumann
NAYS: 2 – Fleming, Narey
MOTION PASSED: 3-2

FILE NUMBER: BDA201-098(PD)

BUILDING OFFICIAL'S REPORT: Application of Mehrdad Moayedi represented by Tommy Mann of Winstead PC for variances to the side yard and front yard setback regulations at 3601 Routh Street. This property is more fully described as Lots 11, 12, and 13, within Block 7/1012, and is zoned an MF-3 Multiple Family Subdistrict within Planned Development District No. 193, which requires a front yard setback of 10 feet for the portion of a structure less than 36 feet-in-

height and 25 feet for the tower portion of a structure greater than 36 feet-in-height, and requires a side yard setback of 41 feet for the tower portion of a structure greater than 36 feet-in-height. The applicant proposes to construct and maintain a multifamily structure and provide a 10-foot side yard setback for the tower portion greater than 36 feet-in-height, which will require a 31-foot variance to the side yard setback regulations on both side yards, and to provide no (zero) front yard setback for the portion less than 36 feet-in-height, which will require a 10-foot variance to the front yard setback regulations, and to construct a multifamily tower structure and provide a 10-foot front yard setback for the portion greater than 36 feet-in-height, which will require a 15-foot variance to the front yard setback regulations on both Routh and Hood street frontages.

LOCATION: 3601 Routh Street

APPLICANT: Mehrdad Moayedi represented by Tommy Mann of Winstead PC

REQUESTS:

The applicant proposes to construct and maintain a multifamily dwelling unit and provide a 10-foot side yard setback for tower portions greater than 36 feet-in-height and a provide a zero-foot front yard setback for the portion less than 36 feet-in-height.

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:

- (G) 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;
- (H) 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
- (I) 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.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (k) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;

- (l) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
- (m) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (n) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (o) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION (both variances):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the MF-3 Multiple Family Subdistrict considering its restrictive lot area of 18,955 square feet, two front yards, and topography changes of approximately eight feet ensuring that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning. The applicant submitted a document (**Attachment A**) indicating the restrictive slope and area.

BACKGROUND INFORMATION:

Zoning: all within PDD No. 193 with a D Liquor Control Overlay

<u>Site</u>	MF-3 Multiple Family Subdistrict
<u>North:</u>	MF-3 Multiple Family Subdistrict
<u>South:</u>	MF-3 Multiple Family Subdistrict
<u>East:</u>	MF-3 Multiple Family Subdistrict
<u>West:</u>	O-2 Office Subdistrict and MF-3 Multiple Family Subdistrict

Land Use:

The subject site is undeveloped while the surrounding properties are developed with residential uses consisting of multifamily or more specifically, condominiums.

Zoning/BDA History:

There have not been any related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The requests for variances to the front yard and side yard setbacks focus on constructing and maintaining a multifamily structure and providing a 10-foot side yard setback for the tower portion greater than 36 feet-in-height, which will require a 31-foot variance to the side yard setback regulations on both side yards, and to provide no (zero) front yard setback for the portion less than 36 feet-in-height, which will require a 10-foot variance to the front yard setback regulations, and to construct a multifamily tower structure and provide a 10-foot front yard

setback for the portion greater than 36 feet-in-height, which will require a 15-foot variance to the front yard setback regulations on both Routh and Hood street frontages.

DCAD records indicate that the subject property was developed with a multifamily development prior to 2018, however the multifamily structure was razed between 2019 and 2021. The property is proposed to be developed with a four-story condominium structure consisting of 20 dwelling units and a total maximum height of approximately 62 feet. Additionally, the subject property is 18,955 square feet in area, contains two front yards, and has topography changes of approximately eight feet across the length of the site.

Section 51P-193.118(b)(6) states that in an MF-3 Subdistrict, the following minimum front yard setbacks must be provided for all building and structures:

(A) 10 feet for the first 36 feet in height.

(B) 25 feet for all portions of a building above 36 feet in height. (See Exhibit 193D-6.)

The above section of the code ensures that for the first 36 feet of the structure fronting along Routh Street and Hood Street a minimum setback of 10 feet is required. Since the structure is proposed to have a maximum height of 62 feet measured from average grade, the remaining 26 feet-in-height is required to provide the additional setback of 25 feet. Since the site has two front yards, the size and location of the structure is further encumbered by the additional front yard and tower setback.

Section 51P-193.119(b)(6)(7) states in the MF-3 and MF-4 subdistricts, if a building is erected or altered to exceed 36 feet-in-height, an additional setback must be provided that is equal to one-half of the total height of the building, up to a maximum setback of 50 feet. The additional setback is only required for that portion of a building that exceeds 36 feet-in-height.

Thus, compliance with this section of the code would require the structure to provide the ten-foot side yard with an additional 31 feet (half of the maximum height of 62) for a total setback of 41 feet. Since the property has two front yards, this maintains that the property also has two side yards and no rear yard. Therefore, the northern portion of the structure and the western portion of the structure are considered side yards and must provide a 41-foot side yard setback. Additionally, this section of the code also provides a 20 percent reduction for one side yard, if an additional setback is required. Thus, one side yard could provide a 32-foot-eight-inch side yard setback while the other must provide a 41-foot side yard setback.

The property's slope increases the height of the building since the building will be measured from the average grade rather than grade. This also imposes an additional setback triggered by the increase in height. Considering the restrictive area and slope of the property, the additional setbacks would further restrict the buildable area by more than 1,200 square feet.

The applicant has the burden of proof in establishing the following:

- That granting the variance to the floor area regulations for structures accessory to single-family uses 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 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 zoning classification.

As of October 8, 2021, no letters have been submitted in support of or in opposition to the request.

Ultimately, the four requests are independent, and the board must consider the standards and evidence presented for each request.

If the board were to grant the variances to the front yard and side yard setbacks and impose the submitted site plan as a condition, the building footprints of the structures on the site would be limited to what is shown on the plan. However, granting these requests will not provide any relief to the Dallas Development code regulations.

Timeline:

August 20, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

Sept. 16, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.

Sept. 17, 2021: The Senior Planner 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 September 28, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the October 8, 2021 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.

Sept. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No review comment sheets were submitted in conjunction with this application.

October 8, 2021: The applicant provided additional evidence with renderings (**Attachment A**).

October 19, 2021: The Board held the request under advisement until the November 16, 2021, Panel A hearing. To date, no updates have been provided

BOARD OF ADJUSTMENT ACTION: November 16, 2021

APPEARING IN FAVOR: Philip Kingston 5901 Palo Pinto Dr. Dallas, TX
Raj Sharma 899 N. Stemmons Fwy. Dallas, TX

APPEARING IN OPPOSITION: Andrew Spaniol 1500 Marilla St. Dallas, TX
Megan Wimer 320 E. Jefferson Dallas, TX

MOTION#1: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 201-098, on application of Mehrdad Moyedi represented by Tommy Mann of Winstead PC, **grant** the ten-foot variance to the front yard setback to the portion of the structure less than 36 feet-in-height and a 25 foot variance to the front yard setback to the portion of the structure greater than 36 feet-in-height as 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 and elevation is required.

SECONDED: Halcomb

AYES: 5 – Halcomb, Lamb, Neumann, Fleming, Narey

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

MOTION#2: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 201-098, on application of Mehrdad Moyedi represented by Tommy Mann of Winstead PC, **grant** the 41 foot variance to the side yard setback to the portion of the structure greater than 36 feet-in-height as 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 and elevation is required.

SECONDED: Halcomb

AYES: 5 – Halcomb, Lamb, Neumann, Fleming, Narey

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

MOTION: Neumann

I move to adjourn the Panel A hearing

SECONDED: Lamb

AYES: 5 - Lamb, Halcomb, Narey, Fleming, Neumann

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

4:01 P.M. Board Meeting adjourned for **November 16, 2021**



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.

From: [Jackson, Latonia](#)
To: [Rogers, Shombray](#)
Cc: [SEC B&C](#)
Subject: RE: January Submissions: Attendance, Annual Report, Minutes
Date: Monday, January 24, 2022 6:41:43 PM
Attachments: [January Attendance "22.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
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[image008.png](#)
[11-16-21 \(A\).pdf](#)
[11-17-21\(B\).pdf](#)

Hello Shombray,

. Please see below in response to your email.

Attendance – For boards that meet monthly, we ask to please provide at least 13 months of attendance.

(the attendance is listed from December 2020 to January 2022)

Minutes - What date did the chair sign the minutes?

(Chair Neumann: 1/18/22; Vice Chair Gambow 1/19/22)

Other Attachment – Not sure if this was meant to be attachments of minutes for one of the panels, but it has a BOA related letters?

(So sorry for the confusion with Panel B. I mistakenly sent letters and not the minutes. I've attached the correct information)

Please let me know if anything further is needed.

Thank you so much.



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