



BOARD OF ADJUSTMENT

Panel A Minutes

November 14, 2023

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CITY SECRETARY  
DALLAS, TEXAS

6ES Council Briefing

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David A. Neumann, Chairman

**PRESENT: [5]**

David A. Neumann, Chairman	
Kathleen Davis	
Rachel Hayden	
Jay Narey	
Michael Hopkovitz	

**ABSENT: [0]**


Chair Neumann called the briefing to order at **10:30A.M.** with a quorum of the Board of Adjustment present.

Chair Neumann called the hearing to order at **1:00 P.M.** with a quorum of the Board of Adjustment present.

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.

**PUBLIC SPEAKERS**

The Board of Adjustment provided "public speaker" opportunities for individuals to comment on matters that were scheduled on the agenda or to present concerns or address issues that were not matters for consideration listed on the posted meeting agenda.

- We had no speakers for public testimony during this hearing.

**MISCELLANEOUS ITEMS**

Approval of the Board of Adjustment Special Call Meeting Minutes.

**Motion was made to approve the Board of Adjustment Special Call Meeting Minutes.**

Maker:	Rachel Hayden				
Second:	Kathleen Davis				
Results:	5-0 unanimously				Moved to approve
		Ayes:	-	5	David A. Neumann, Rachel Hayden, Kathleen Davis, Michael Hopkovitz and Jay Narey
		Against:	-	0	

Approval of the Board of Adjustment Panel A, September 19<sup>th</sup>, 2023 meeting minutes.

**Motion was made to approve Panel A, September 19<sup>th</sup>, 2023 public hearing minutes.**

Maker:	Kathleen Davis				
Second:	Rachel Hayden				
Results:	5-0 unanimously				Moved to approve
		Ayes:	-	5	David A. Neumann, Rachel Hayden, Kathleen Davis, Michael Hopkovitz and Jay Narey
		Against:	-	0	

**CONSENT ITEMS**

**1. 4707 Allencrest Lane**

**\*This case was moved to Individual Cases.**

BDA223-095(KMH)

**BUILDING OFFICIAL'S REPORT:** Application of Madison Umberger for (1) a special exception to the side yard setback regulations at 4707 Allencrest Ln. This property is more fully described as Block C/6394, Lot 13 and is zoned R-16(A), which requires a side yard setback of 10-feet. The applicant proposes to construct a carport for a single-family residential dwelling in a required side yard and provide a 4-inch setback, which will require a (1) 9-foot 8-inch special exception to the side yard setback regulations.

**LOCATION:** 4707 Allencrest Ln.

**APPLICANT:** Madison Umberger

**REQUEST:**

1. A request for a special exception to the side yard setback regulations.

**STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:**

Section 51A-4.402(c) of the Dallas Development Code specifies the Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (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) The **suitability of the size and location** of the carport.
- (D) The **materials to be used in construction** of the carport.

(Storage of items other than motor vehicles are prohibited in a carport for which a special exception is granted in this section of the Code).

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is, when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-16(A) (Single family district)
- North: R-16(A) (Single family district)
- South: R-16(A) and R-1/2ac(A) (Single family districts)
- East: R-16(A) (Single family district)
- West: R-16(A) (Single family district)

**Land Use:**

The subject site and all surrounding properties are developed with single family uses.

**BDA History:**

No BDA history within the last five years.

**GENERAL FACTS/STAFF ANALYSIS:**

- The purpose of this request is for a special exception to the side yard setback regulations. The applicant proposes to construct and maintain a carport in a required side yard providing

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a 4-inch setback; therefore, requiring a 9-foot 8-inch special exception to the side yard setback regulations.

- The subject site is zoned R-16(A) which requires a side yard setback of 10-feet.
- The subject property and surrounding properties are all developed with single-family uses.
- The Dallas Development Code states that required side yards must be open and unobstructed except for fences. The applicant is proposing to construct and/or maintain a carport in a required side yard on a lot developed with a single-family home.
- The submitted site plan and elevations illustrate the location of the proposed carport.
- As gleaned from the submitted site plan, the applicant is proposing to construct and maintain a 296 square feet carport in a required setback along the west perimeter of the property, providing a 4-inch setback; whereas the Dallas Development Code requires a 10-foot side yard setback for single-family dwellings in the R-16(A) zoning district.
- The applicant has the burden of proof in establishing that the special exception to the side yard setback regulations will not have a detrimental impact on surrounding properties.
- Granting this special exception to the side yard setback regulations to allow a carport in the required side yard providing a 4-inch side yard setback on the site with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed and maintained as shown on the submitted documents.

**Timeline:**

September 11, 2023: 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 2, 2023: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

October 4, 2023: The Senior Planner emailed the applicant's representative 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 23, 2023 deadline to submit additional evidence for staff to factor into their analysis; and the November 3, 2023 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."

November 1, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans

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Examiner the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

**Speakers:**

**For:** Madison Umberger, 4707 Allencrest Ln, Dallas TX 75244

**Against:** No Speakers

**Motion**

I move that the Board of Adjustment, in Appeal No. BDA 223-095, on application of Madison Umberger, **DENY** the special exception to the side-yard setback regulation for carports, requested by this applicant **without** prejudice, contained in the Dallas Development Code, as amended, because our evaluation of the property and testimony shows that granting the request will have a detrimental impact on surrounding properties.

<b>Maker:</b>	Kathleen Davis				
<b>Second:</b>	Rachel Hayden				
<b>Results:</b>	5-0				Moved to deny
		<b>Ayes:</b>	-	5	David A. Neumann, Kathleen Davis, Jay Narey, Rachel Hayden and Michael Hopkovitz
		<b>Against:</b>	-	0	

**2. 2764 Catherine Street**

\*This case was moved to Individual Cases  
 BDA223-097(KMH)

**BUILDING OFFICIAL'S REPORT** Application of Robert Smith for (1) a special exception to the fence height regulations, and for (2) a special exception to the 20-foot visibility obstruction regulations, and for (3) a special exception to the 20-foot visibility obstruction regulations at 2764 Catherine St. This property is more fully described as Block 2/3879, Lot 1, and is zoned CD-8; subarea 1 (R-7.5(A)), which limits the height of a fence in the 50% of the side-yard and corner side-yard to 4-feet and requires a 20-foot visibility triangle at driveway approaches, and requires a 20-foot visibility triangle at the point of intersection of the edge of an alley and an adjacent street curb line. The applicant proposes to construct a 6-foot high fence in a required side-yard, which will require (1) a 2-foot special exception to the fence height regulations; and to construct a single-family residential fence structure in a required 20-foot visibility obstruction triangle, which will require (2) a special exception to the 20-foot visibility obstruction regulation at driveway approaches; and to construct a single-family residential fence structure in a required 20-foot visibility obstruction triangle, which will require (3) a special exception to the 20-foot visibility obstruction regulation intersection of the edge of an alley and an adjacent street curb line.

**LOCATION:** 2764 Catherine St.

**APPLICANT:** Robert Smith

**REQUEST:**

1. A request for a special exception to the fence height regulations,
2. A request for a special exception to the 20-foot visibility obstruction regulations, and;
3. A request for a special exception to the 20-foot visibility obstruction regulations.

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

Section 51A-4.602(b)(2) of the Dallas Development Code states that the board may grant a special exception to the fence regulations when in the opinion of the board, **the special exception will not adversely affect neighboring property.**

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

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

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence regulations 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.

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when in the opinion of the board, the item will not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

<u>Site:</u>	CD-8; Subarea R-7.5 (A) (Single Family District)
<u>North:</u>	CD-8
<u>East:</u>	CD-8
<u>South:</u>	CD-8
<u>West:</u>	CD-8

**Land Use:**

The subject site and all surrounding properties are developed with single-family uses.

**BDA History:**

No BDA history in the last five years.

**GENERAL FACTS/STAFF ANALYSIS:**

- The application of Robert Smith for the property located at 2764 Catherine Street focuses on 3 requests. The first request is for a special exception to the fence height regulations of 4-feet. The applicant is proposing to construct and maintain a 6-foot high fence in a required front yard, which will require a 2-foot special exception to the fence height regulations. The

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applicant is proposing the fence along Pierce Street and along the alley. It is imperative to note the fence along Pierce Street will include a gate

- Secondly, the applicant proposes to maintain a single-family fence in a required visibility triangle at the driveway approach along Pierce Street, which will require a special exception to the visual obstruction regulations. The visual obstruction regulations require a 20-foot visibility triangle at all driveway approaches.
- Additionally, the applicant proposes to maintain a single-family fence structure in a required visibility triangle at the intersection of the edge of an alley and an adjacent street curb line, which requires a 20-foot special exception to the visual obstruction regulations.
- The subject site along with the surrounding properties are all developed with single family uses.
- It is imperative to note that the subject site is a corner lot.
- As gleaned from the submitted site plan and elevations, the applicant is proposing to maintain a new 6-foot wooden fence. The proposed fence and gate are shown to encroach into the required visibility triangle at the driveway approach along Pierce Street. The proposed fence is also shown to encroach into the visibility triangle at the street intersection and the alley.
- The CD-8 zoning district limits the height of a fence in the 50% of the side-yard and corner side-yard to 4-feet.
- The applicant has the burden of proof in establishing that the special exception to the fence regulations will not adversely affect the neighboring property.
- The applicant has the burden of proof in establishing that the special exception to the visual obstruction regulations does not constitute a traffic hazard.
- If the Board were to grant this special exception request and impose a condition that the applicant complies with the submitted site plan/elevation, the proposal over 2-feet in height in the front yard setback would be limited to that what is shown on the submitted documents.
- Additionally, granting this request for a special exception to the visual obstruction regulations with a condition imposed that the applicant complies with the submitted site plan would limit the proposed fence in the 20-foot visibility triangles at the driveway into the site from Pierce Street and the alley to what is shown on the submitted documents.

**Timeline:**

- September 13, 2023: 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 2, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- October 4, 2023: 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 October 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and November 3, 2023, 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.

November 1, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the July public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

Speakers:

For: Robert Smith, 2764 Catherine Street, Dallas TX 75211

Against: No Speakers

City Staff: Diana Barkume, Project Coordinator  
Trevor Brown, Conservation District Chief Planner

**Motion # 1**

I move that the Board of Adjustment, in Appeal No. BDA 223-097, on application of Robert Smith, **DENY** the special exception requested by this applicant to construct and/or maintain a 6-foot high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

Maker:	Rachel Hayden				
Second:	Kathleen Davis				

**Motion # 2**

Moved to withdraw the motion

Maker:	Rachel Hayden				
Second:	Kathleen Davis				

**Motion # 3**

I move that the Board of Adjustment in Appeal No. BDA 223-097 **HOLD** this matter under advisement until **January 16<sup>th</sup>, 2024**.



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Maker:	Rachel Hayden				
Second:	Michael Hopkovitz				
Results:	4-1				Moved to hold until January 16 <sup>th</sup> , 2024
		Ayes:	-	4	David A. Neumann, Rachel Hayden, Michael Hopkovitz and Jay Narey
		Against:	-	1	Kathleen Davis

\*\*\**Recess: 1:38 p.m.; Resume: 1:46 p.m.*\*\*\*

**HOLDOVER CASES**

**3. 9122 Inwood Road**  
BDA223-083(KMH)

**BUILDING OFFICIAL’S REPORT** Application of Trenton Robertson for (1) a special exception to the fence height regulations, and for (2) a special exception to the fence standard regulations at 9122 INWOOD RD. This property is more fully described as Block 6/5579, Part of lot 5 and 7, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4-feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5-feet from the front lot line. The applicant proposes to construct a 9-foot 3-inch high fence in a required front yard, which will require (1) a 5-foot 3-inch special exception to the fence height regulations, and to construct 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 (2) a special exception to the fence opacity regulations.

**LOCATION:** 9122 Inwood Rd.

**APPLICANT:** Trenton Robertson

**REQUEST:**

- (1) A request for a special exception to the fence height regulations; and
- (2) A special exception to the fence opacity regulations.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT STANDARD REGULATIONS:**

Section 51A-4.602(b)(2) of the Dallas Development Code states that the board may grant a special exception to the fence regulations when in the opinion of the board, the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE OPACITY STANDARD REGULATIONS:**

Section 51A-4.602(a)(11) of the Dallas Development Code states that the board may grant a special exception to the fence regulations 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 any special exceptions to the fence regulations 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: PD 815  
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 and all surrounding properties are developed with single-family uses.

**BDA History:**

No BDA history found within the last 5 years.

**GENERAL FACTS/STAFF ANALYSIS:**

- The purpose of this request is for a special exception to the fence regulations of 4-foot focuses on constructing and/or maintaining an 9-foot 3-inch high fence in a required front yard; additionally, this request is also for a special exception to the fence standards regulations for a fence panel having less than 50 percent open surface area located less than 5-feet from the front lot line.
- The subject site and surrounding properties are zoned R-1ac (A).
- 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 Dallas Development Code also states that no fence panel having less than 50 percent open surface area may be located less than 5-feet from the lot line.
- As gleaned from the submitted site plan and elevations, the applicant is proposing 9-foot 3-inch high masonry wall in the front yard along Inwood Road and along Northwest Highway.
- The applicant has the burden of proof in establishing that the special exception to the fence regulations will not adversely affect the neighboring property.
- Granting these special exceptions to the fence standards relating to height up to 9-feet 3-inches and location of fence panels with surface areas that are less than 50 percent open on the site with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.

**Timeline:**

- July 11, 2023: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 24, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- August 2, 2023: 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 August 21, 2023, deadline to submit additional evidence for staff to factor into their analysis; and September 8, 2023, 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.
- August 29, 2023: The Development Services Engineer provided a response sheet with no objections.
- August 30, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the September public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.
- September 19, 2023: The Board of Adjustment Panel A, at its public hearing held on Tuesday, September 19, 2023, voted to hold this matter under Advisement until November 14, 2023.
- November 3, 2023: The applicant submitted revised drawings.

**Speakers:**

For: Karl Crawley, 2201 Main Street # 1280, Dallas TX 75201  
Steve Long, 2201 Main Street # 1280, Dallas TX 75201

Against: No Speakers

**Motion # 1**

I move that the Board of Adjustment, in Appeal No. BDA 223-083, on application of Trenton Robertson, **GRANT** the request of this applicant to construct and/or maintain a 9-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code,

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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 most recent version of all submitted plans are required.

Maker:	Rachel Hayden				
Second:	Jay Narey				
Results:	5-0 unanimously				Moved to grant
		Ayes:	-	5	David A. Neumann, Rachel Hayden, Kathleen Davis, Michael Hopkovitz and Jay Narey
		Against:	-	0	

**Motion # 2**

I move that the Board of Adjustment, in Appeal No. BDA 223-083, on application of Trenton Robertson, **GRANT** the request of this applicant to construct and/or maintain a fence with panel having less than 50 percent open surface area located less than five-feet from the front lot line as a special exception to the surface area openness requirement for fences in the Dallas Development Code, 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 most recent version of all submitted plans are required.

Maker:	Kathleen Davis				
Second:	Jay Narey				
Results:	5-0 unanimously				Moved to grant
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Michael Hopkovitz, Jay Narey and Rachel Hayden
		Against:	-	0	

**INDIVIDUAL CASES**

**4. 5526 E.R.L. Thornton Freeway**

BDA212-078(KMH)

**BUILDING OFFICIAL'S REPORT:** Application of Audra Buckley for (1) a variance to the parking regulations, for (2) a special exception to the landscape and tree preservation regulations, and for (3) a variance to the side yard setback regulations at 5526 E R L Thornton FWY. This property is more fully described as lot 6A, block 7/1633 and is zoned CR, which requires parking to be provided, and landscape to be provided and a 20-foot side yard setback to be provided. The applicant proposes to construct and/or maintain nonresidential structures for retail, motor vehicle fueling

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station, and personal service uses and provide 20 of the required 34 parking spaces, which will require (1) a 14-space variance (41% reduction) to the parking regulation. The applicant proposes to construct and/or maintain nonresidential structures which requires mandatory landscaping and provide an alternate landscape plan, which will require (2) a special exception to the landscape regulations. The applicant proposes to construct and/or maintain nonresidential structures and provide a 0-foot side yard setback which will require (3) a 20-foot variance to the side yard setback regulations.

**LOCATION:** 5526 E R L Thornton FWY

**APPLICANT:** Audra Buckley

**REQUEST:**

- (1) A request for a variance to the off-street parking regulations;
- (2) A request for a special exception to the landscape regulations; and
- (3) A request for a variance to the side-yard setback regulations.

**STANDARD FOR A VARIANCE:**

Section 51A-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 the municipality considers the structure to be a nonconforming structure.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPING AND TREE MITIGATION:**

Section 51A-10.110 of the Dallas Development Code states the board may grant a special exception to the requirements of this article upon making a special finding from the evidence presented that strict compliance with the requirements of this article will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. In determining whether to grant a special exception under Subsection (a), the board shall consider the following factors:

- The extent to which there is residential adjacency.
- The topography of the site.
- The extent to which landscaping exists for which no credit is given under this article.
- The extent to which other existing or proposed amenities will compensate for the reduction of landscaping. (Ord. Nos. 22053; 25155)

**STAFF RECOMMENDATION:**

**Variance to parking regulations:**

Denial

Rationale: Based upon evidence presented and provided by the applicant, staff concluded that the site is:

- A. Not contrary to the public interest as no letters of opposition were received.
- B. The site is not restrictive in that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning;
- C. Self-created/personal hardship.

**Variance to side yard setback regulations:**

Denial

Rationale: Based upon evidence presented and provided by the applicant, staff concluded that the site is:

- A. Not contrary to the public interest as no letters of opposition were received.
- B. The site is not restrictive in that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning;
- C. Self-created/personal hardship.

**Special Exception:**

No staff recommendation is made on this or any request for a special exception to the landscape regulations 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.

**BDA HISTORY:**

No BDA History found within the last 5 years.

**Zoning:**

Site: CR (Community Retail)  
North: RR (Regional Retail)  
South: PD 136 and P(A)  
East: CR and P(A) (Community Retail and Parking)  
West: CR (Community Retail)

**Land Use:**

The subject site is developed with a convenience store. The surrounding properties are developed with some retail uses and single-family residential homes.

**GENERAL FACTS/STAFF ANALYSIS:**

- A request for a variance to the off-street parking regulations of 14 spaces is made to construct and/or maintain a nonresidential structure for retail, motor vehicle fueling station, and personal service uses. The applicant proposes to provide only 20 of the 34 required parking spaces, resulting in the need for a 41% reduction in the parking space requirements.
- The applicant is also requesting a special exception to the landscape and tree mitigation regulations. Article X requires minimum standards for new construction and additions, including conditions for the street buffer zone and residential buffer zone.
- Additionally, the applicant is requesting a variance to the side yard setback regulations. The Dallas Development Code requires a 20-foot side yard setback for the CR zoning when abutting a residential zoning district. The applicant is proposing a zero-foot side yard setback along the south perimeter of the site, resulting in the need for a 20-foot variance.
- As gleaned from the submitted site and landscape plan, the applicant is proposing to construct and maintain an 1,800 square foot convenience store. There is currently an existing motor vehicle fueling station located on the lot as well.
- The submitted site and landscape plan also illustrates the landscape that will be provided as well as the proposed 20 parking spaces.

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

- That granting the variance to the off-street parking regulations and the side yard variance 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 a specific parcel of land that differs from other parcels of land by being of such 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
- 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 a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

The board may also consider **Dallas Development Code §51A-3.102(d)(10)(b) formerly known as HB 1475** 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.

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- (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 considers the structure to be a nonconforming structure.
- Granting the proposed 14-space variance to the off-street parking regulations and the 20-foot side yard variance with a condition that the applicant complies with the submitted site plan, would require the proposal to be constructed as shown on the submitted documents.
  - Additionally, granting the special exception to the landscape and tree mitigation regulations with a condition that the applicant complies with the submitted site and landscape plan, would require the proposal to be constructed as shown on the submitted documents.

**Timeline:**

- September 11, 2023: 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 2, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- October 4, 2023: 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 October 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and November 3, 2023, 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 19, 2023: A site visit was conducted on October 19<sup>th</sup> by the Senior Planner; During the site visit, the notification signs were not properly posted. The Senior Planner sent email to applicant regarding this issue.
- October 23, 2023: The applicant emailed the Senior Planner with pictures of the Notification signs posted properly.
- November 1, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans



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Examiner the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

November 3, 2023: The Chief Arborist provided a memo stating, "The chief arborist has no objection to the proposed alternate landscape plan provided the variances that authorize the site conditions are approved by the board. The full application of Article X would unreasonably burden the use of the property. As a condition, I recommend the required planting conditions of Section 51A-10.125 be applied for all trees and shrubs identified on the alternate landscape plan. All trees on the landscape plan shall be 'large' or 'medium' trees and all shrubs shall be 'large evergreen shrubs'."

**Speakers:**

For: Audra Buckley, 1414 Belleview St Ste. 150, Dallas TX 75215  
 Against: No Speakers

**Motion**

I move that the Board of Adjustment in Appeal No. BDA 212-078, **HOLD** this matter under advisement until **January 16<sup>th</sup>, 2024**, requested by the applicant.

Maker:	Kathleen Davis				
Second:	Rachel Hayden				
Results:	5-0 Unanimously				Moved to hold until January 16 <sup>th</sup> , 2024.
		Ayes:	-	5	David A. Neumann, Rachel Hayden, Kathleen Davis, Michael Hopkovitz and Jay Narey
		Against:	-	0	

**5. 4515 Harrys Lane**  
 BDA223-096(KMH)

**BUILDING OFFICIAL'S REPORT** Application of Christopher Cole for (1) a special exception to the fence height regulations at 4515 Harrys Lane. This property is more fully described as Block D/5534, Lot 8 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4-feet. The applicant proposes to construct a 7-foot-high fence in a required front yard, which will require (1) a 3-foot special exception to the fence regulations.

**LOCATION:** 4515 Harrys Lane

**APPLICANT:** Christopher Cole

**REQUEST:**

(3) A request for a special exception to the fence height regulations.

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

Section 51A-4.602(b)(2) of the Dallas Development Code states that the board may grant a special exception to the fence regulations when in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION:**

Special Exception

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

**BACKGROUND INFORMATION:**

**Zoning:**

<u>Site:</u>	R-1ac(A) (Single Family District)
<u>North:</u>	R- 1ac(A) (Single Family District)
<u>East:</u>	R- 1ac(A) (Single Family District)
<u>South:</u>	R- 1ac(A) and R-16(A) (Single Family Districts)
<u>West:</u>	R- 1ac(A) (Single Family District)

**Land Use:**

The subject site and all surrounding properties are developed with single-family uses.

**BDA History:**

No BDA history

**GENERAL FACTS/STAFF ANALYSIS:**

- The application of Christopher Cole for the property located at 4515 Harrys Lane focuses on the fence height regulations. The applicant is proposing to construct and maintain a 7-foot-high fence in a required front yard, which will require a 3-foot special exception.
- The subject site along with properties to the north, east, south and west are all developed with single-family homes.
- As gleaned from the submitted site plan and elevations, the applicant is proposing to construct and maintain a 7' open iron fence in the required front yard along Harrys Lane with an open iron entrance gate.
- 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 applicant has the burden of proof in establishing that the special exception to the fence regulations will not adversely affect the neighboring properties.

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- Granting the special exceptions to the fence standards relating to height with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.

**Timeline:**

September 11, 2023: 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 2, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.

October 4, 2023: 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 October 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and November 3, 2023, 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 23, 2023: The applicant provided documentary evidence.

November 1, 2023: The Board of Adjustment staff review team meeting was held regard request and other requests scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorney to the Board, the Senior Planner Code Compliance staff.

**Speakers:**

For: Christopher Cole, 4515 Harrys Lane, Dallas TX 75229  
Shawe Lewis, 4515 Harrys Lane, Dallas TX 75229

Against: Sherri Courie, 4525 Harrys Lane, Dallas TX 75229  
Jeff Eli Courie, 4525 Harrys Lane, Dallas TX 75229  
Jerry Wheeler, 4545 Harrys Lane, Dallas TX 75229  
Sonja Mathisen, 4544 Catina Lane, Dallas TX 75229  
Brad Pazandak, 4505 Harrys Lane, Dallas TX 75229  
Joyce Pazandak, 4505 Harrys Lane, Dallas TX 75229

**Motion**

I move that the Board of Adjustment, in Appeal No. BDA 223-096, on application of Christopher Cole, **DENY** the special exception requested by this applicant to construct and/or maintain a 7-foot high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

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Maker:	Kathleen Davis					
Second:	Jay Narey					
Results:	5-0 Unanimously					Moved to deny
		Ayes:	-		5	David A. Neumann, Kathleen Davis, Michael Hopkovitz, Rachel Hayden, Jay Narey
		Against:	-		0	

**6. 5434 Ross Avenue**  
BDA223-102(DB)

**BUILDING OFFICIAL'S REPORT:** Application of Rodolfo Rodriguez represented by Gilbert Cortez for (1) a variance to the front yard setback regulations, and for (2) a variance to the front yard setback regulations at 5434 Ross Ave. This property is more fully described as Block 1487, Tract 21, and is zoned PD-842, which requires a front yard setback of 15-feet. The applicant proposes to construct and/or maintain a non-residential structure and provide a 0-foot front yard setback on Ross Avenue, which will require (1) a 15-foot variance to the front yard setback regulations; and to construct and/or maintain a non-residential structure and provide a 0-foot front yard setback on Greenville Avenue, which will require (2) a 15-foot variance to the front yard setback regulations.

**LOCATION:** 5434 Ross Avenue

**APPLICANT:** Rodolfo Rodriguez

**Represented by:** Gilbert Cortez

**REQUEST:**

- (4) A request for a variance to the front yard setback regulations at both Ross Avenue and Greenville Avenue

**STANDARD FOR A VARIANCE:**

Section 51A-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:
  - (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 the municipality considers the structure to be a nonconforming structure.

**STAFF RECOMMENDATION:**

**Variance:**

- Denial

Based upon the evidence presented and provided to staff, staff concluded that the request is:

- not contrary to public interest as no opposition was received;
- restrictive in area and shape that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- it is a self-created or personal hardship.

**BDA HISTORY:**

No BDA history found within the last 5 years.

**Zoning:**

Site: CR-Community Retail District  
North: CR-Community Retail District  
South: PD 842 Nonresidential zoning district  
East: CR-Community Retail District  
West: CR-Community Retail District

**Land Use:**

The subject site is developed with a Restaurant without drive-in service use. The areas to the north, south, east, and west are developed with commercial uses.

**GENERAL FACTS/STAFF ANALYSIS:**

- A request for a variance to the front yard setback regulations of 15-feet is made to construct and/or maintain a Restaurant without drive-in service use.
- The subject site is surrounded by nonresidential structures with restaurant, personal service and general merchandise uses.

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- The Dallas Development Code requires a 15-foot front yard setback for the CR (A) zoning district.
- Per the submitted site plan, the applicant proposes to construct and/or maintain a restaurant without drive-in service use providing a 0-foot front yard setback at both Ross Avenue and Greenville Avenue.

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

- That granting the variance to the front yard setback 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 a specific parcel of land that differs from other parcels of land by being of such 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
- 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 a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**Timeline:**

September 15, 2023: 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 2, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.

October 4, 2023: 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 October 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and November 3, 2023, 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.

November 1, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

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Speakers:

For: Gilbert Cortez, 5434 Ross Ave., Dallas TX 75206

Against: No Speakers

**Motion # 1**

I move that the Board of Adjustment, in Appeal No. BDA 223-102, on application of Rodolfo Rodriguez, **DENY** the variance on Ross Avenue, 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.

Maker:	Jay Narey				
Second:	Rachel Hayden				
Results:	5-0 unanimously				Moved to deny
		Ayes:	-	5	David A. Neumann, Rachel Hayden, Kathleen Davis, Michael Hopkovitz and Jay Narey
		Against:	-	0	

**Motion # 2**

I move that the Board of Adjustment, in Appeal No. BDA 223-102, on application of Rodolfo Rodriguez, **DENY** the variance on Greenville Avenue, 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.

Maker:	Jay Narey				
Second:	Rachel Hayden				
Results:	5-0 Unanimously				Moved to deny
		Ayes:	-	5	David A. Neumann, Rachel Hayden, Kathleen Davis, Michael Hopkovitz and Jay Narey
		Against:	-	0	

\*\*\*Recess: 4:15 p.m.; Resume: 4:22 p.m.\*\*\*

**7. 5524 Vickery Boulevard**  
BDA223-107(KMH)

**BUILDING OFFICIAL'S REPORT:** Application of Michael Vann to appeal the decision of the administrative official at 5524 Vickery Blvd. This property is more fully described as Block 10/1928, Lot 6 and is zoned CD-15, which requires compliance with conservation district architectural

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standards. The applicant proposes to appeal the decision of an administrative official in the denial of a conservation district review.

**LOCATION:** 5524 Vickery Blvd.

**APPLICANT:** Michael Vann

**REQUEST:**

A request is made to appeal the decision of the administrative official for the denial CD23051003 application to exceed fence height limit in side-yard.

**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).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD-15  
North: CD-15  
South: CD-15  
East: CD-15  
West: CD-15

**Land Use:**

The subject site is developed with a single-family home. The surrounding properties are also developed with single-family homes.

**BDA History:**

No BDA history within the last five years.

**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.



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Timeline:

October 4, 2023: The applicant was sent a denial letter for CD23051003 application to exceed fence height limit in side yard.

October 4, 2023: 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 19, 2023: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

October 23, 2023: The Senior Planner emailed the applicant's representative 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 23rd deadline to submit additional evidence for staff to factor into their analysis; and the November 3rd 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 23, 2023: The Applicant provided documentary evidence.

November 1, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

Speakers:

For: Michael Vann, 5524 Vickery Blvd, Dallas TX 75206

Against: No Speakers

City Staff: Trevor Brown, Conservation District Chief Planner

**Motion**

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. BDA 223-107, on application of Michael Vann, 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.

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Maker:	Rachel Hayden			
Second:	Jay Narey			
Results:	5-0 Unanimously			Moved to deny
		Ayes:	- 5	David A. Neumann, Rachel Hayden, Kathleen Davis, Michael Hopkovitz and Jay Narey
		Against:	- 0	

\*\*\*Recess: 5:00 p.m.; Resume: 5:06 p.m.\*\*\*

**ADJOURNMENT**

After all business of the Board of Adjustment had been considered, Chair Neumann moved to adjourn the meeting at 6:44 p.m.

Maker:	Michael Hopkovitz			
Second:	Rachel Hayden			

Mary Williams  
Required Signature:  
Mary Williams, Board Secretary  
Development Services Dept.

1/16/2024  
Date

[Signature]  
Required Signature:  
Jason Pool, DEV Administrator  
Development Services Dept.

1/16/24  
Date

[Signature]  
Required Signature:  
~~David A. Neumann, Chairman~~  
Board of Adjustment Kathleen Davis

1/16/23  
Date