

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
MONDAY, SEPTEMBER 19, 2022**

MEMBERS PRESENT AT BRIEFING: Robert Agnich, Vice Chair - regular member, Rodney Milliken, regular member, Judy Pollock, regular member, Jared Slade, regular member, and Andrew Finney, alternate member

MEMBERS ABSENT FROM BRIEFING: Roger Sashington, regular member,

MEMBERS PRESENT AT HEARING: Robert Agnich, Vice Chair - regular member, Rodney Milliken, regular member, Judy Pollock, regular member, Jared Slade, regular member, and Andrew Finney, alternate member

MEMBERS ABSENT FROM HEARING: Roger Sashington, regular member,

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Attorney, Brian King, Asst. City Attorney, Mike King, Senior Planner/ meeting moderator, LaTonia Jackson, Board Secretary, Charles Trammell, Consultation Manager and Phil Erwin, Arborist.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Attorney, Brian King, Asst. City Attorney, Mike King, Senior Planner/ meeting moderator, LaTonia Jackson, Board Secretary, Charles Trammell, Consultation Manager and Phil Erwin, Arborist.

11:08 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, **September 19, 2022 docket.**

*****Panel C called to enter into Executive Session at 11:11 a.m.*****

BOARD OF ADJUSTMENT ACTION: September 19, 2022

1:15 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 C August 15, 2022 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: September 19, 2022

MOTION: Pollock

Approval of the Board of Adjustment Panel C August 15, 2022 public hearing minutes.

SECONDED: Agnich

AYES: 5 – Milliken, Slade, Pollock, Agnich, Finney

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-FW3

BUILDING OFFICIAL'S REPORT: Application of Juan Jose Villanueva, for a fee waiver for special exceptions to the fence height and visibility triangle regulations at 7120 Cortland Avenue.

LOCATION: 7120 Cortland Avenue

APPLICANT: Juan Jose Villanueva

REQUESTS:

The applicant is requesting a fee waiver for special exceptions to the fence height and visibility triangle regulations. The fee waiver is requested to accommodate a fence taller than four feet-in-height in a front yard along the property line and driveway onto the site containing a single-family dwelling.

STANDARD FOR A FEE WAIVER:

Section 51A-1.105(b)(6) of the Dallas Development Code specifies the board of adjustment may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant. The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination. If the issue is placed on the miscellaneous docket, the applicant may not apply to the merits of the request for a waiver have been determined by the board. In making this determination, the board may require the production of financial documents.

STAFF RECOMMENDATION:

The staff does not make a recommendation on fee waiver requests since the standard is whether the board finds that payment of the fee would result in substantial financial hardship to the applicant.

CASE HISTORY:

On June 23, and March 21, 2022, Panel C denied a fee waiver for special exceptions to the fence height and visibility triangle regulations. No new information has been provided.

BOARD OF ADJUSTMENT ACTION: September 19, 2022

APPEARING IN FAVOR: Ricardo Villanueva 2111 Pond View Ct. Dallas, TX
Juan Villanueva 7120 Cortland Dallas, TX
Blanca Villanueva 7120 Cortland Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Finney

I move that the Board of Adjustment, in Appeal No. BDA 212-FW3, on application of Juan Jose Villanueva, **grant** the request to waive the filing fees to be paid in association with a request for a special exception to the fence height regulations and visibility triangle regulations as requested by this applicant because our evaluation of the property and testimony shows that the payment of the fee would result in substantial financial hardship to this applicant.

SECONDED: Agnich

AYES: 4 – Milliken, Slade, Agnich, Finney

NAYS: 1 – Pollock

MOTION PASSED: 4-1

FILE NUMBER: BDA212-069(JM)

BUILDING OFFICIAL'S REPORT: Application of William Harris for a variance to the side yard setback regulations at 1822 Sanger Avenue. This property is more fully described as Tract 17, Block G/874 and is zoned Tract 1, RS-C Regional Service Commercial Subdistrict within PD No. 595, the South Dallas/Fair Park Special Purpose District, which requires a 15-foot side yard setback where there is residential adjacency. The applicant proposed to construct a residential live-work unit, and provide a five-foot side yard setback, which will require a 10-foot variance to the side yard setback regulations.

LOCATION: 1822 Sanger Avenue

APPLICANT: William Harris

REQUESTS:

A request for a variance to the side yard setback regulations of 10 feet is made to construct and maintain a live-work unit. Per PD No. 595, a live-work unit means an interior space with street-level access that combines residential with office or retail and personal service uses. For purposes of spacing or proximity regulations, a live-work unit is considered a non-residential use. The minimum side yard required is 15 feet where adjacent to or directly across an alley from a residential subdistrict including an MF-2(A) Subdistrict, which exists to the northeast, southeast, and southwest.

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:

- In general.
 - (i) 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;
 - (ii) 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
 - (iii) 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.
- Structures. In exercising its authority under Subsection (A)(ii), 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:
 - (i) 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 of the Texas Tax Code;
 - (ii) 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;
 - (iii) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (iv) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (v) the municipality considers 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 is unique and different from most lots zoned an RS-C Regional Service Commercial Subdistrict within PD No. 595 considering its irregular quadrilateral shape which narrows in width from 63.5 feet at the front to 47.8 feet in the back. The applicant submitted evidence which was subsequently revised (**Attachment A_Revised**) comparing the lot size/area of the subject site with 7,864 square feet to the six other lots within the 200-foot notification radius with the same zoning. Per the comparative analysis, the average lot area is 17,381 square feet, more than double the subject site. Furthermore, if all setbacks are taken by code, the lot is further reduced to a buildable lot area of 2,818 square feet. The applicant has requested to reduce the side yard setback which would increase the buildable lot area to 5,053 square feet.

BACKGROUND INFORMATION:

Zoning w/in PD No. 595:

Site: RS-C Regional Commercial Subdistrict
Northwest: RS-C Regional Commercial Subdistrict
Northeast: MF-2(A) Multifamily Subdistrict
Southeast: MF-2(A) Multifamily Subdistrict
Southwest: MF-2(A) Multifamily Subdistrict

Land Use:

The subject site and surrounding properties are undeveloped except for the contiguous property to the northeast which contains a single-family use.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

A request for a variance to the side yard setback regulations of 10 feet is made to construct and maintain a live-work unit. Per PD No. 595, a live-work unit means an interior space with street-level access that combines residential with office or retail and personal service uses. For purposes of spacing or proximity regulations, a live-work unit is considered a non-residential use. The minimum side yard required is 15 feet where adjacent to or directly across an alley from a residential subdistrict including an MF-2(A) Subdistrict, which exists to the northeast, southeast, and southwest.

While the RS-C Subdistrict has no minimum lot size, the applicant submitted evidence which was subsequently revised (**Attachment A_Revised**) comparing the lot size/area of the subject site with 7,864 square feet to the six other lots within the 200-foot notification radius with the

same zoning. Per the comparative analysis, the average lot area is 17,381 square feet, more than double the subject site. Furthermore, if all setbacks are taken by code, the lot is further reduced to a buildable lot area of 2,818 square feet. The applicant has requested to reduce the side yard setback which would increase the buildable lot area to 5,053 square feet. Additionally, the irregular quadrilateral shape narrows in width from 63.5 feet at the front to 47.8 feet in the back. Staff agreed with this evidence that the subject site is unique and different than most lots with the same zoning due to these hardships.

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

- That granting the variance to the side yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same 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.

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 September 9, 2022, one letter has been submitted in support from the Cedars Neighborhood Association. No letters in opposition of the request have been submitted.

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 further relief to the Dallas Development Code regulations.

Timeline:

May 13, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment."

June 29, 2022: Applications were transferred from Development Services to the Board team at Current Planning for processing on the August docket.

July 1, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 11, 2022: The Board of Adjustment Senior Planner emailed the applicant the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application;
- 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."

July 26, 2022: The applicant submitted evidence which was later updated to reflect a change in the request.

July 27, 2022: The applicant requested to hold the case to the September hearings and was advised of the coordinating deadlines (**Email_1**).

July 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Development Services Chief Planner, Chief Arborist, and the Planner and Urban Design Department Senior Conservation District Planner. No review comment sheets were submitted in conjunction with this application.

August 23, 2022: The applicant submitted revised evidence (**Attachment A**) and a revised site plan (**see Revised Application dated 8-23**) removing the rear variance setback request (**Email_2**). A revised Building Official's Report was issued.

BOARD OF ADJUSTMENT ACTION: September 19, 2022

APPEARING IN FAVOR: William Harris 1822 Sanger Ave Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Pollock

I move that the Board of Adjustment **grant** the following application(s) listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code, as applicable to wit:

BDA 212-069—Application of William Harris, for a variance to the side yard setback regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Milliken

AYES: 5 – Milliken, Slade, Pollock, Agnich, Finney

NAYS: 0 –

MOTION PASSED (unanimously): 5-0

FILE NUMBER: BDA212-086(JM)

BUILDING OFFICIAL'S REPORT: Application of Marcelino Hernandez, Jr. for a special exception to the fence materials regulations at 2821 Simpson Stuart Road. This property is more fully described as Block 15/6890 and is zoned a CR Community Retail District, which prohibits the use of certain materials for a fence. The applicant proposes to construct and maintain a fence of metal panels up to eight-feet-in-height, which will require a special exception to the fence standards regulations relating to materials.

LOCATION: 2821 Simpson Stuart Road

APPLICANT: Marcelino Hernandez, Jr.

REQUEST:

The applicant constructed a fence of a prohibited material on three sides of the property, excluding the rear/northern section. The special exception to the fence standards regulations is sought to permit the existing fence and allow for the expansion along the northern boundary.

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)
Northwest: R-1ac(A) (Single Family District)
Northeast: 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 contains and outside sales use (landscape nursery). Properties to the north are mostly vacant with a few single-family uses. To the south across Simpson Stuart Road is a large undeveloped and heavily wooded property zoned for single-family use.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The subject site is zoned a CR Community Retail District which requires compliance with the fence standards regulations relating to materials. The property has about 100 feet of frontage along the north side of Simpson Stuart Road.

Section 51A-4.602(9)(B) states that except as provided in this subsection, the following fence materials are prohibited:

- (A) Sheet metal;
- (B) Corrugated metal;
- (C) Fiberglass panels;
- (D) Plywood;
- (E) Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
- (F) Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and,
- (G) Barbed wire and razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.

According to DCAD, the property contains 11,325 square feet of area and is undeveloped; however, city records indicate a landscape nursery has been operating at the site since 2015.

The proposed fence has been mostly constructed, without a permit. The northern boundary is not completed.

According to the site and elevation plans submitted, the applicant proposes:

- The applicant proposes to install and maintain a solid metal panel fence, up to eight-feet-in-height, located along the property line, with a setback of 30 feet at the 20-foot-wide driveway from Simpson Stuart Road.

- The metal access gates open inward, are 20 feet wide, and are located outside of the visibility triangles onto the street.

As of September 9, 2022, no letters have been submitted in support or in opposition to the request.

The applicant has the burden of proof in establishing that the special exception to the fence standards related to the use of a prohibited material located on Simpson Stuart Road will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to the material would require the proposal to be maintained in the locations and material as shown on the site plan and elevation plan. However, granting this request will not provide any relief to the Dallas Development Code regulations other than allowing the prohibited material of the fence structure.

Timeline:

July 12, 2022:	The applicant submitted an "Application/Appeal to the Board of Adjustment."
August 4, 2022:	The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
August 11, 2022:	<p>The Board of Adjustment Chief Planner emailed the applicant the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:</p> <ul style="list-style-type: none"> • a copy of the application materials including the Building Official's report on the application; • 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 25, 2022:	The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Conservation District Chief Planner, and the Assistant City Attorney to the Board, the PUD Senior Planner, and the new Assistant City Attorney.

BOARD OF ADJUSTMENT ACTION: September 19, 2022

APPEARING IN FAVOR: Marcelino Hernandez 2821 Simpson Stuart Dallas,TX

APPEARING IN OPPOSITION: None.

MOTION: Pollock

I move that the Board of Adjustment **grant** the following applications listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code, as applicable to wit:

BDA 212-086 – Application Marcelino Hernandez, for a special exception to the fence standards in the Dallas Development Code is granted subject to the following condition:

Compliance with the submitted site and elevation plan is required

SECONDED: Milliken

AYES: 5 – Milliken, Slade, Pollock, Agnich, Finney

NAYS: 0 –

MOTION PASSED (unanimously): 5-0

FILE NUMBER: BDA212-075(JM)

BUILDING OFFICIAL’S REPORT: Application of Blanca Rodriguez for a special exception to the landscaping regulations at 8012 Trade Village Place. This property is more fully described as Lots 6, 7, 21, 22, Block D/6301 and is zoned Tract 3, Subarea 2 within Planned Development District No. 366, the Buckner Boulevard Special Purpose District, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 8012 Trade Village Place

APPLICANT: Blanca Rodriguez

REQUESTS:

The applicant is seeking a special exception to the landscaping requirements of Article X in accordance with the PD requirements. The existing building on the 50-foot-wide lot is being renovated for a restaurant use with a new parking area to be installed behind the building. The parking lot triggers the landscape requirements for this project. The ordinance requires Article X landscaping conditions.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property.
- (2) the special exception will not adversely affect neighboring property; and
- (3) 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, 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.

STAFF RECOMMENDATION:

Staff does not provide a recommendation on special exceptions to the landscape and tree preservation regulations since the standard states the board must make a special finding based on the evidence presented. However, the City of Dallas chief arborist does submit a technical opinion to aid in the board's decision-making. A memo regarding the applicant's request and stating no objection was provided with details of the assessment made (**Attachment B**).

Rationale:

- The chief arborist has no objection to an approval of a special exception due to strict compliance with the landscaping requirements of Article X will unreasonably burden the use of the narrow commercial property. Limited available space is provided for landscaping, and existing trees are to be maintained. Additional landscape amenities not standard to ordinance will be provided adjacent to the proposed restaurant.

BACKGROUND INFORMATION:

Zoning:

Site: Tract 3, Subarea 2 within PD No. 366
North: Tract 3, Subarea 2 within PD No. 366
South: P(A), R-7.5(A), and Subarea 2A within PD No. 366
East: Tract 3, Subarea 2 within PD No. 366

West: Tract 3, Subarea 2 within PD No. 366, CR District

Land Use:

The subject site is contains an office use (newspaper publisher). There are auto-related uses to the west, north, and east; personal service uses to the north; and, surface parking, single-family, and retail/personal service uses to the south.

Zoning/BDA History:

There have been two related board and zoning cases in the vicinity of the subject site within the last five years.

BDA201-102 and 103: On November 17, 2021, Panel B granted special exceptions to the fence standards regulations at 8000 and 8002 Lake June Road to allow a prohibited fence material (corrugated metal). Located north of the subject site.

GENERAL FACTS/STAFF ANALYSIS:

The applicant is seeking a special exception to the landscaping requirements to permit the renovation of an existing structure for a restaurant use with a new parking area to be installed behind the building.

The property is located in Tract 3, Subarea 2 within PD No. 366, the Buckner Boulevard Special Purpose District which defers to Article X for landscaping requirements.

The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period. In this case, the existing structure will be renovated and the construction of the new parking lot triggers compliance with landscape regulations.

The City of Dallas chief arborist submitted a memo regarding the applicant's request (**Attachment B**).

The chief arborist's memo states the following with regard to "request":

The applicant is seeking a special exception to the landscaping requirements of Article X in accordance with PD 366 Subarea 2. The existing building on the 50-foot wide lot is being renovated for a restaurant use with a new parking area to be installed behind the building. The parking lot triggers the landscape requirements for this project. The ordinance requires Article X landscaping conditions which are not physically attainable on site if they are to provide the parking required.

The chief arborist's memo states the following with regard to "provision":

The proposed alternative landscape plan provides for multiple Little Gem Magnolia and retained existing trees around the perimeter of the new parking lot in small pockets next to parking spaces. Mexican redbud trees are placed inset to paved areas around the building. Additional plantings in containers are provided around the building.

Article X: The site provides the required number of site trees with the existing trees. Irrigation provisions are made on the plan to include all new plant materials on site.

The chief arborist's memo states the following with regard to "deficiencies":

The proposed alternative landscape plan provides for multiple Little Gem Magnolia and retained existing trees around the perimeter of the new parking lot in small pockets next to parking spaces. Mexican redbud trees are placed inset to paved areas around the building. Additional plantings in containers are provided around the building.

Article X: The site provides the required number of site trees with the existing trees. Irrigation provisions are made on the plan to include all new plant materials on site.

The chief arborist's revised memo states the following with regard to the "recommendation":

The chief arborist has no objection to an approval of a special exception due to strict compliance with the landscaping requirements of Article X will unreasonably burden the use of the narrow commercial property. Limited available space is provided for landscaping, and existing trees are to be maintained. Additional landscape amenities not standard to ordinance will be provided adjacent to the proposed restaurant.

As of September 9, 2022, no letters have been submitted in support or in opposition to the request.

If the board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be held to the details of the proposed plan. No further relief is granted from the regulations of the Dallas Development Code or PD No. 366.

Timeline:

June 21, 2022:	The applicant submitted an "Application/Appeal to the Board of Adjustment."
August 4, 2022:	The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
August 11, 2022:	The Board of Adjustment Chief Planner emailed the applicant the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application;
- 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 25, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Conservation District Chief Planner, and the Assistant City Attorney to the Board, the PUD Senior Planner, and the new Assistant City Attorney.

August 26, 2022: A revised landscape plan was submitted (**Attachment A**). The Development Services Chief Arborist provided staff with a memo (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: September 19, 2022

APPEARING IN FAVOR: Edith Rodriguez 8012 Trade Village Pl Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 212-075, on application of Blanca Rodriguez, **grant** the request of this applicant for a special exception to the landscape requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property and testimony shows that (1) strict compliance with the requirements of this article will unreasonably burden the use of the property; (2) the special exception will not adversely affect neighboring properties, and (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

Compliance with the submitted alternate landscape plan is required.

SECONDED: Milliken

AYES: 4 – Milliken, Slade, Pollock, Finney

NAYS: 1 – Agnich

MOTION PASSED: 4-1

FILE NUMBER: BDA212-082(JM)

BUILDING OFFICIAL'S REPORT: Application of Karl Crawley of Masterplan Texas for a special exception to the fence height regulations at 10203 Hollow Way Road. This property is more fully described as Lot 1, Block 5517 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 and maintain a six-foot-six-inch-high fence with a 12-foot gate in a required front yard on Hollow Way Road, which will require an eight-foot special exception to the fence height regulations.

LOCATION: 10203 Hollow Way Road

APPLICANT: Karl Crawley, Masterplan Texas

REQUEST:

The applicant proposes to attach a wall and gates to an existing wrought iron fence on the property or located within the neighboring property.

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)
Northwest: R-1ac(A) (Single Family District)
Northeast: 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 and all surrounding properties are developed with single-family uses.

Zoning/BDA History:

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

1.

B

DA178-139: On January 16, 2019, Panel B granted variances to the front and side yard setback regulations at 10221 Hollow Way Road on a property contiguous to west of the subject site.

2.

B

DA189-058: On May 20, 2019, Panel C granted a special exception to the minimum front yard setback requirements to preserve an existing tree at 10040 Hollow Way Road located to east of the subject site.

GENERAL FACTS/STAFF ANALYSIS:

The subject site is zoned an R-1ac(A) Single Family District and requires a minimum front yard setback of 40 feet. 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 request for a special exception to the fence height regulations is made to construct and maintain a nine-foot-tall fence with a 12-foot-tall gate which will require an eight-foot special exception.

According to DCAD, the property contains 2.00 acres and is developed with a two-story, 10,382-square-foot single-family structure constructed in 2007. Additional improvements include a 1,248-square-foot attached garage, tennis court, and pool. The proposed fence has not yet been constructed.

According to the site and elevation plans submitted, the applicant proposes:

- A 19-foot-wide decorative iron gate with a maximum height of 12 feet and an automatic opener.
- The gate is to be located 26 feet from the property line that curves 104 feet along Hollow Way Road. The visibility triangles from the private driveway onto the road are unobstructed.
- The proposed six-foot-tall walls surrounding the gates are limestone with limestone columns and cast stone caps and gas lanterns on either side of the gates which reach a height of eight feet plus architectural finials that reach up to 11 feet six-inches.
- These sections of the solid walls are set back from 19 feet seven-inches on the south, to 24 feet four-inches to the north from the property line along Hollow Way Road.
- The northern wall section contains an iron pedestrian gate that is three feet wide and seven feet tall.

As of September 9, 2022, no letters have been submitted in support or in opposition to the request.

The applicant has the burden of proof in establishing that the special exception to the fence standards related to the height of up to eight feet located on 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 Hollow Way Road to be maintained in the locations and heights as shown on the site plan and elevation plan. However, granting this request will not provide any relief to the Dallas Development Code regulations other than allowing the additional height for the fence structure.

Timeline:

- July 17, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment."
- August 4, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 11, 2022: The Board of Adjustment Chief Planner emailed the applicant the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:
- a copy of the application materials including the Building Official's report on the application;
 - 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 25, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Conservation District Chief Planner, and the Assistant City Attorney to the Board, the PUD Senior Planner, and the new Assistant City Attorney.

BOARD OF ADJUSTMENT ACTION: September 19, 2022

APPEARING IN FAVOR:

Karl Crawley 2201 Main #1280 Dallas, TX

APPEARING IN OPPOSITION:

None.

MOTION: **Agnich**

I move that the Board of Adjustment, in Appeal No. BDA 212-082, on application of Karal Crawley, **deny** the special exception requested by this applicant to construct and/or maintain a 12-foot-high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Finney**

AYES: 3 –Slade, Pollock, Agnich

NAYS: 2 – Milliken, Finney

MOTION PASSED: 3-2

FILE NUMBER: BDA212-091(JM)

BUILDING OFFICIAL'S REPORT: Application of Wendy Golson for a special exception to the tree preservation regulations at 238 Hillvale Drive. This property is more fully described as Lot 17, Block 6625 and is zoned an R-7.5(A) Single Family District, which requires mandatory tree preservation and mitigation. The applicant proposes to construct a residential subdivision and requests an extended deadline for compliance and reduction in the required mitigation, which will require a special exception to the tree preservation regulations.

LOCATION: 238 Hillvale Drive

APPLICANT: Wendy Golson

REQUESTS:

The applicant is seeking a special exception to the tree preservation requirements of Article X. The property is undeveloped and contains 2.72 acres planned for a shared access, single-family development. The applicant is seeking to reduce the mitigation requirement (overall inches/reforestation fee) and extend the mitigation time frame from six-months to 18 months.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION AND MITIGATION REGULATIONS:

(1) The board may grant a special exception to the requirements of Division 51A-10.130, other than fee and notice requirements, upon making a special finding from the evidence presented that:

(A) strict compliance with the requirements of Division 51A-10.130 will unreasonably burden the use of the property;

(B) the special exception will not adversely affect neighboring property; and

(C) the requirements are not imposed by a site-specific landscape plan or tree mitigation plan approved by the city plan commission or city council.

(2) In determining whether to grant a special exception under Paragraph (1), the board shall consider the following factors:

(A) The extent to which there is residential adjacency.

(B) The topography of the site.

(C) The extent to which landscaping exists for which no credit is given under this article.

(D) The ability to plant replacement trees safely on the property.

(E) The extent to which alternative methods of replacement will compensate for a reduction of tree mitigation or extended time for tree replacement.

STAFF RECOMMENDATION:

Staff does not provide a recommendation on special exceptions to the tree preservation and mitigation regulations since the standard states the board must make a special finding based on the evidence presented. However, the City of Dallas chief arborist does submit a technical opinion to aid in the board's decision-making. A memo regarding the applicant's requests was provided stating no objection to the time extension, but objection to the reduction of 112 inches for the required mitigation due to a lack of details on the tree survey provided (**Attachment B**).

Rationale:

- The chief arborist has no objections to the time extension request with an established completion date for tree replacement. However, there is an objection to the reduction of the total replacement amount since there is no assessment of the tree survey to indicate the basis of the reduction. The applicant has not indicated tree condition, classification, tree size, or species to support the merits of reducing for one or more of the trees in the removed tree stand.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) Single Family District
North: R-7.5(A) Single Family District
South: R-7.5(A) Single Family District
East: R-7.5(A) Single Family District
West: RR Regional Retail District

Land Use:

The property is undeveloped. Properties to the north, east, and south are developed with single-family uses. Properties to the west are zoned for commercial use, and largely developed with auto and truck-related uses.

Zoning/BDA History:

There have been no related board and zoning cases in the vicinity of the subject site within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The applicant is seeking a special exception to the tree preservation requirements of Article X. The property is undeveloped and contains 2.72 acres planned for a shared access, single-family development. The applicant is seeking to reduce the mitigation requirement (overall inches/reforestation fee) and extend the mitigation time frame from six-months to 18 months.

The City of Dallas chief arborist submitted a memo regarding the applicant's request (**Attachment B**).

The chief arborist's memo states the following with regard to "request":

The applicant is seeking a special exception to the tree conservation requirements of Article X. The request is to consider a special exception for multiple provisions of the Tree Conservation ordinance including the timing of replacement and for a reduction to the requirement for replacement.

1. A minimum of 412.6 diameter inches of tree replacement is required. The applicant requests to reduce the total mitigation requirement to 300 diameter inches.
2. Replacement must be completed according to timing requirements per ordinance within six months of removal (April 2022) with exception of the site landscaping determined by landscape plan which may be completed with the development. The applicant requests an additional time of 18 months from after a board approval, with conditions of a) tree donation to the City for remaining mitigation, and b) a payment of \$10,000 to the Reforestation Fund, and then c) the fulfillment of final confirmed planting date on-site (112 inches) on or before January 30, 2025.

The chief arborist's memo states the following with regard to "provision":

A large number of mature protected trees were removed from the property in April 2022 without a tree removal application which is required under Article X. Fill material was stored and graded across the property raising the grade of the lot affecting some of the trees. The owner intends for future construction of a shared access development of single-family units. The property design can comply with minimum Article X landscaping requirements for shared access developments.

Based on staff verification of a tree survey, 412.6 classified inches from 30 protected trees were removed, or will be removed, for the proposed development. The owner proposes to plant a total of 28 trees to mitigate 112 inches of replacement trees on the property leaving 300.6

diameter inches left to be completed through alternative methods of replacement within six months after removal.

The chief arborist's memo states the following with regard to "deficiencies":

A reduction of tree mitigation from 412.6 diameter inches to 300 diameter inches would leave 188 inches remaining to be mitigated for what is not planted on site.

A payment of \$10,000 to the Fund would be the equivalent of 51.8 inches (12.6%) of tree replacement of the 412.6 inches required.

The city ordinance under Sec. 51A-10.134(c)(5) stipulates that all replacement must occur within 30 days. If the property owner provides the building official with an affidavit stating that all replacement trees will be planted within six months, the building official may allow the planting to occur then. For residential subdivisions, tree replacement may also occur with the completion of a tree replacement plan for the development. Additional time may be allotted for the site tree replacement to be completed at the end of the development. However, all required tree replacement that is not scheduled by the approved design for the development site must be completed within the six months of tree removal. The applicant has made a request for an alternate replacement plan to extend overall to a time certain.

Reduction

Ordinance

412.6" required total
112" on-site
\$10,000 to Reforestation Fund
Remainder to City department

Request

300" total
112" on-site
\$10,000 to Reforestation Fund
Remainder to Parks and Recreation

Timing

Ordinance

30 days/6 months (affidavit to extend)
Alternative methods available by ordinance.

Request

18 months after board decision
Donation to Parks
Reforestation Fund payment

Development LA plan/completion on site. January 30, 2025, or sooner, on site.

Trees removed:

Tree classification

Four significant trees (1.5x)
Class 2 (0.7x)
Class 3 (0.4x)

Diameter inches

162"
233.8"
16.8"

412.6

300 request for reduction.

Average tree size (pre-class): 16.1"

Significant trees are native red oaks at 24" diameter or greater with a mitigation 1.5 times the base measurement (ex.: 24" tree is 36"). Class 2, or standard 'favored' trees, have mitigation reduced to 70% of baseline. Class 3 trees are listed for lower mitigation rates at 40% of baseline.

The chief arborist's revised memo states the following with regard to the "recommendation":

The chief arborist has no objections to the time extension request with an established completion date for tree replacement. However, there is an objection to the reduction of the total replacement amount since there is no assessment of the tree survey to indicate the basis of the reduction. The applicant has not indicated tree condition, classification, tree size, or species to support the merits of reducing for one or more of the trees in the removed tree stand.

As of September 9, 2022, no letters have been submitted in support or in opposition of the request.

If the board were to grant this request, due to the nature of the request, staff does not recommend requiring compliance with the submitted alternate tree mitigation plan as a condition to the request. The time extension and reduction in overall mitigation requirements would be permitted with the approval/board action letter with no need for a plan to complicate further details of how the request is fulfilled. Finally, no further relief is granted from the regulations of the Dallas Development Code.

Timeline:

- July 11, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment."
- August 4, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 11, 2022: The Board of Adjustment Chief Planner emailed the applicant the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:
- a copy of the application materials including the Building Official's report on the application;
 - 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 25, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Conservation District Chief Planner, and the Assistant City Attorney

to the Board, the PUD Senior Planner, and the new Assistant City Attorney.

August 26, 2022: A revised mitigation plan was submitted (**Attachment A**). The Development Services Chief Arborist provided staff with a memo (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: September 19, 2022

APPEARING IN FAVOR: Wendy Golson 2704 Logan Dr. Mansfield, TX

APPEARING IN OPPOSITION: Billy High 327 Penguin Dr. Dallas, TX
Cerol Taylor 339 Penguin Dr. Dallas, TX
Louis Deere, Jr. 1558 Bar Harbor Dr. Dallas, TX
Gregory Clapton 235 Hillvale Dr. Dallas, TX

MOTION: Milliken

I move that the Board of Adjustment, in Appeal No. BDA 212-091, on application of Wendy Golson, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that strict compliance with the requirements of Article X will not unreasonably burden the use of the property (**and/or**) the special exception will adversely affect neighboring properties.

SECONDED: Finney

AYES: 5 – Milliken, Slade, Pollock, Agnich, Finney

NAYS: 0 –

MOTION PASSED (unanimously): 5-0

MOTION: Agnich

I move to adjourn the Panel C hearing.


SECONDED: Pollock

AYES: 5 – Milliken, Slade, Pollock, Agnich, Finney

NAYS: 0 –

MOTION PASSED (unanimously): 5 - 0

The meeting was adjourned at **2:50 P.M. on September 19, 2022**


CHAIRPERSON

BOARD ADMINISTRATOR

signed: 10-17-22



BOARD SECRETARY

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