

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE/6ES  
TUESDAY, SEPTEMBER 20, 2022**

MEMBERS PRESENT AT BRIEFING: David A. Neumann, Chair, regular member, Jay Narey, regular member, Lawrence Halcomb, regular member, Kathleen Frankford, regular member and Rachel Hayden, regular member

MEMBERS ABSENT FROM BRIEFING: None

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., Brian King, Asst. City Attorney, Charles Trammell, Consultation Manager, Jason Pool, Senior Planner/Meeting Moderator, David Nevarez, Senior Traffic Engineer, Phil Erwin, Arborist

MEMBERS PRESENT AT HEARING: David A. Neumann, Chair, regular member, Jay Narey, regular member, Lawrence Halcomb, regular member, Kathleen Frankford, regular member and Rachel Hayden, regular member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., Brian King, Asst. City Attorney, Charles Trammell, Consultation Manager, Jason Pool, Senior Planner/Meeting Moderator, David Nevarez, Senior Traffic Engineer, Phil Erwin, Arborist

**11:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 20, 2022, 2022** docket.

*\*\*\* Panel A called to enter into Executive Session at 12:34 p.m. \*\*\**

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**1:34 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and

testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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### **MISCELLANEOUS ITEM NO. 1**

Approval of the August 16, 2022 Board of Adjustment Panel A Public Hearing Minutes

### **BOARD OF ADJUSTMENT ACTION: September 20, 2022**

**MOTION:** Narey

Approval of the August 16, 2022 Board of Adjustment Panel A Public Hearing Minutes

**SECONDED:** Frankford

**AYES:** 5 – Hayden, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0

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

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**FILE NUMBER:** BDA212-083(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Kenneth Schnitzer/NWH Land LP represented by Tommy Mann of Winstead PC to enlarge a nonconforming use at 2425 W. Northwest Highway. This property is more fully described as Lot 1.1, Block B/5795 and is zoned an MU-3 Mixed Use District, which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming vehicle display, sales, and service use, which will require a special exception to the nonconforming use regulations.

**LOCATION:** 2425 W. Northwest Highway

**APPLICANT:** Kenneth Schnitzer/NWH Land LP

**REPRESENTATIVE:** Tommy Mann of Winstead PC

**REQUEST:**

The site contains a nonconforming vehicle display, sales, and service use initially established under Chapter 51 in 1986. The applicant requests to expand the nonconforming use to all indoor storage for vehicles attached at the northeast portion of the existing structure.

### **STANDARD FOR ENLARGING A NONCONFORMING USE:**

Section 51A-4.704(b) (5) (B) of the Dallas Development Code states the board may allow the enlargement of a nonconforming use when, *in the opinion of the board*, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

### **STAFF RECOMMENDATION:**

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on *the opinion of the board*.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: MU-3 Mixed Use District  
North: MU-3 Mixed Use District  
East: RR Regional Retail District  
South: IR Industrial Research District  
West: CS Commercial Service District

### **Land Use:**

The property contains a vehicle display, sales, and service use. Surrounding sites include retail and personal service uses to the north, east, and west. Across the freeway to the south is a mini-warehouse storage, auto body shop and other auto-related uses, and the DPD Northwest Patrol Station and other City/utility offices.

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

There has been one relevant zoning/board related case in the vicinity over the last five years; however, it was terminated due to six months of inactivity. Z201-316 was a request for an SUP Specific Use Permit for a vehicle display, sales, and service use contiguous to the north of the subject site. The use is not permitted with an SUP and would have required a general rezoning, as well.

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

The existing structure was erected in 1986 with a 20,757-square-foot automotive display area and 32,996-square-foot automotive service area, per DCAD records. The zoning district at the time was pre-transition, Chapter 51, and allowed the automobile or motorcycle display, sales, and service (inside display) use by right. This use is defined as a facility for the display, service, and retail sale of new or used automobiles, motorcycles, motor scooters, recreational vehicles, and trailers, with outside display permitted.

On August 20, 1987, a CO certificate of occupancy, was issued for a vehicle display, sales, and service use (**Attachment B**) which was likely recategorized when the item was entered into POSSE. On July 17, 1989, the zoning was transitioned from an I-2 Industrial District to an MU-3 Mixed Use District (**Attachment C**). The new district no longer permitted the use, which was redefined as a vehicle display, sales, and service use under retail and personal service uses in Chapter 51A. The use is now defined as a facility for the display, service, and retail sale of new or used automobiles, boats, trucks, motorcycles, motor scooters, recreational vehicles, or trailers.

When the zoning transition occurred, the vehicle display, sales, and service use became nonconforming and subject to Sec.51A-4.704 rules for maintaining and enlarging a nonconforming use. The applicant is now seeking to enlarge the vehicle display, sales, and service use by adding a covered storage area for the vehicles at the northeast portion of the site.

Section 51A-2.102(89) of the Dallas Development Code defines a nonconforming use as a use that does not conform to the use regulations of this chapter but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.

Section 51A-4.704(b)(5)(A) of the Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.

The applicant has the burden of proof to establish that the enlargement of the non-conforming use:

1. does not prolong the life of the nonconforming use;
2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
3. will not have an adverse effect on the surrounding area.

The applicant's representative submitted a letter as evidence (**Attachment A**) describing the existing operation, proposed addition of 4,626 square feet of building area for an indoor garage "to protect the vehicles from severe weather and allow maintenance and detailing operations." The letter continues to identify 1) how the request will meet the standard for not prolonging the life of the nonconforming use; 2) the garage would have been permitted under previous zoning; and, 3) the request will not have an adverse impact on the surrounding area.

If the board were to grant this request with a condition imposed that the applicant may obtain a CO for the additional floor area per the submitted site plan, the enlargement of the nonconforming use would be limited to exactly that, with no limitations on the structure other than the existing development code requirements. Granting this request will not provide relief from any other requirements of the code.

### **Timeline:**

- |                  |   |
|------------------|---|
| July 8, 2022:    | 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 26, 2022:   | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.   |
| 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: <ul style="list-style-type: none"><li>• a copy of the application materials including the Building Official's report on the application;</li></ul> |

- 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 24, 2022: The applicant’s representative submitted evidence (**Attachment A**).

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 20, 2022**

**APPEARING IN FAVOR:**

Tommy Mann 2728 N. Harwood St.#500 Dallas, TX  
David Martin 2728 N. Harwood St.#500 Dallas, TX  
Ken Schnitzer 2728 N. Harwood St.#500 Dallas, TX

**APPEARING IN OPPOSITION:**

**MOTION: Neumann**

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 212-083**—Application of Kenneth Schnitzer/NWH Land, LP represented by Tommy Mann, to enlarge a nonconforming use in the Dallas Development Code is granted subject to the following condition:

Compliance with the submitted site plan is required.

**SECONDED: Halcomb**

**AYES:** 5 – Hayden, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA212-087(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Janet Sipes represented by Rob Baldwin of Baldwin and Associates for a special exception to the fence height regulations at 4186 Brookport Drive. This property is more fully described as Lot 15, Block B/6153 and is zoned an R-16(A) Single Family District, which limits the height of a fence in the front yard to four feet.

**LOCATION:** 4186 Brookport Drive

**APPLICANT:** Rob Baldwin, Baldwin and Associates

**REQUEST:**

The applicant proposes to construct and maintain an eight-foot-high fence in a required front yard on Midway Road, which will require a four-foot special exception to the fence height regulations.

**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-16(A) (Single Family District)  
Northwest: R-16(A) (Single Family District)  
Northeast: R-16(A) (Single Family District)  
East: R-16(A) (Single Family District)  
South: 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 except for a church to the north.

**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 a variance to the front yard setback regulations on the site contiguous to west.
2. B  
DA189-058: On May 20, 2019, Panel C granted a special exception to the minimum front yard setback to preserve an existing tree on a property to the east.

**GENERAL FACTS/STAFF ANALYSIS:**

The subject site is zoned an R-16(A) Single Family District and requires a minimum front yard setback of 35 feet and compliance with the fence standards regulations in required front yards. While typically the longer of the two street frontages is considered a side yard, this property has two front yards to maintain block continuity due to properties adjacent to the west fronting along Brookport Drive.

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 an eight-foot-high fence in a required front yard on Midway Road, which will require a four-foot special exception to the fence height regulations.

According to DCAD, the property contains 26,123 square feet of lot area and is undeveloped. Furthermore, the property has 125 feet of frontage along Midway Road and 225 feet of frontage along Brookport Drive. The property is currently being developed with a single-family structure. The proposed fence has not yet been constructed.

According to the site/elevation plan submitted, the applicant proposes:

- A solid cedar fence eight-feet-in-height located 10 feet from the property line along Midway Road, in the required front yard.
- The fence follows the 35-foot setback line along the Brookport Drive frontage and has an electric rolling gate located 35 feet from the property line along Brookport Drive.
- The visibility triangles from the private driveway onto the road and at the intersection of Midway Road and Brookport Drive are unobstructed.

As of September 9, 2022, no letters have been submitted regarding the request.

Due to the setback provided along Midway Road, a second special exception for the solid nature of the fence is not required.

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 Midway Road will not adversely affect neighboring properties. On September 1<sup>st</sup>, the applicant's representative submitted revised evidence including an updated letter (**Attachment A**) and clearer site/elevation plan (**Attachment B**). The applicant proposes to mitigate traffic noise along Midway Road by installing the solid wood fence on this shorter frontage. The letter provided also details the extent to which surrounding properties that front along Midway Road have solid screening walls/fences located in these front yards from six to eight feet-in-height.

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 Midway 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:**

- June 27, 2022: 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 26, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- 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.

September 1, 2022: The applicant's representative submitted a revised letter and clearer site/elevation plan (**Attachment A and B**).

**BOARD OF ADJUSTMENT ACTION: September 20, 2022**

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

**APPEARING IN OPPOSITION:** None.

**MOTION: Frankford**

I move that the Board of Adjustment, in Appeal No. BDA 212-087, on application of Janet Sipes represented by Rob Baldwin, **grant** the request of this applicant to construct and/or maintain an eight-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

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

**SECONDED: Narey**

**AYES:** 5 – Hayden, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0 –

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

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**FILE NUMBER:** BDA212-073(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Aida Figueroa-Flores for special exceptions to the fence standards regulations relating to height and opacity at 1903 Farola Drive. This property is more fully described as Lot 14, Block 7/5372 and is zoned R-7.5(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line. The applicant proposes to construct an eight-foot-high fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, which will require special exceptions to the fence standards regulations.

**LOCATION:** 1903 Farola Drive

**APPLICANT:** Aida Figueroa-Flores

**REQUEST:**

The applicant proposes to construct an eight-foot-high **solid** cedar fence in a required front yard along Desdemona Drive, which will require special exceptions to the fence regulations relating to height and opacity/openness.

**UPDATE:**

Since the last hearing on August 18<sup>th</sup>, the applicant submitted a revised set of plans (**Attachment A**) showing a reduced height of six feet along the Farola Drive frontage. All updates in the report are highlighted.

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

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

**STAFF RECOMMENDATION (fence height + opacity):**

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

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-7.5(A) Single Family 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: R-7.5(A) Single Family District

### **Land Use:**

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

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

There have not been any recent related board or zoning cases recorded either on or near the subject site within the last five years.

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

The subject site is located on the northeast corner of Farola Drive and Desdemona Drive and zoned an R-7.5(A) Single Family District which requires a 25-front yard and compliance with the fence standards regulations in required front yards. However, this property is encumbered with two front yards due to a provision in the Dallas Development Code meant to maintain block continuity when lots face upon a street and provide a front yard setback. This second front yard setback is required to maintain block continuity established by lots to the north of the subject site, which all front along the Desdemona Drive.

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. Additionally, the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five from the front lot line.

According to DCAD, the existing one-story single-family structure was constructed in 2005 containing a 1,404-square-foot main structure and a 216-square-foot attached garage. The corner lot has a width of 60 feet along Farola Drive and a length of 123 feet along Desdemona Drive.

The applicant proposes to replace an existing six-foot-high solid wood privacy fence with an eight-foot-tall solid wood fence along the property line which would require a four-foot special exception to height and a special exception to opacity to be permitted.

The following was noted from reviewing the site and elevation plans provided:

- The proposed fence is an eight-foot-tall, board-on-board (solid in nature), decorative cedar fence along the western lot line along Desdemona Drive.

- The fence begins at the most inset western façade of the main structure facing Farola Drive and travels horizontally about 30 feet to the Desdemona Drive property line, avoiding the 45-foot visibility triangle at the street intersection. This section of the fence is not located in the front yard since it is setback outside of the required front yard. Additionally, revised plans submitted reduced the height of the fence in this section to six feet (Attachment A).
- The fence then turns north along the property line for about 70 feet before accommodating the 20-foot visibility triangle at the alleyway intersection and turning easterly along the alley frontage. This is the area of request, which has not changed since the last time it was presented to the board.

Staff conducted a field visit of the site and surrounding area and noticed one other fence within a 200-foot radius of the property that seemed taller than four feet-in-height and solid in nature located in second front yard. This fence is located at the northwest corner of Farola Drive and Desdemona Drive.

The applicant has the burden of proof in establishing that the special exceptions to the fence height of up to two feet and opacity in the second required front yard will not adversely affect neighboring properties.

As of September 9, 2022, staff received five letters in support and none in opposition regarding this request.

If the board were to grant the special exceptions and impose the site plan and elevation as conditions, the proposed fence located along the lot line and within the second front yard setback along the Desdemona Drive frontage would be limited to what is shown on these documents. Finally, no additional relief is provided with this request.

### **Timeline:**

|                |   |
|----------------|---|
| May 5, 2022:   | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.  |
| 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 assigned this case to Board of Adjustment Panel A.  |
| July 19, 2022: | The Board of Adjustment Chief Planner/Board Administrator emailed the applicant's representative 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 five letters in support of the request.

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 16, 2022: Panel A held this case to September 20<sup>th</sup> at the applicant's request.

August 31, 2022: A revised set of plans was submitted by the applicant (**Attachment A**).

## **DRAFT MINUTES**

### **BOARD OF ADJUSTMENT ACTION: August 16, 2022**

APPEARING IN FAVOR: Aida Flores 1903 Farola Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: **Narey**

I move that the Board of Adjustment in Appeal No. BDA 212-073 **hold** this matter under advisement until September 20, 2022.

SECONDED: **Halcomb**

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

### **BOARD OF ADJUSTMENT ACTION: September 20, 2022**

APPEARING IN FAVOR: Aida Flores 1903 Farola Dr. Dallas, TX  
(translator) Dalfia Gaona 7834 Villa Cliff Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

**MOTION#1: Halcomb**

I move that the Board of Adjustment, in Appeal No. BDA 212-073, on application of Aida Figueroa-Flores, **grant** the request of this applicant to construct and/or maintain an eight-foot-high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

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

**SECONDED: Narey**

**AYES:** 5 – Hayden, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0 -

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

**MOTION#2: Halcomb**

I move that the Board of Adjustment, in Appeal No. BDA 212-073, on application of Aida Figueroa-Flores, **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 revised submitted site plan and elevation is required.

**SECONDED: Frankford**

**AYES:** 5 – Hayden, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA212-079(PD/JM)

**BUILDING OFFICIAL'S REPORT:** Application of Kent Washington for a special exception to the parking regulations at 424 W. Davis Street. This property is more fully described as Lot 4, in City Block 10/3138, and is zoned CD No. 7, the Bishop Eighth Conservation District, which requires off-street parking to be provided. The applicant proposes to construct a nonresidential structure for a restaurant without drive-in or drive-through service use, and provide nine of the required 11 parking spaces, which will require a two-space special exception (18 percent reduction) to the parking regulation.

**LOCATION:** 424 W. Davis Street

**APPLICANT:** Kent Washington

**REQUEST:**

A request for a special exception to the off-street parking regulations of two spaces is made to construct a restaurant without a drive-in or drive-through service use with a total floor area of 2,484 square feet on the subject site.

**UPDATE:**

Since August 18, 2022, the applicant has contracted a traffic engineering firm to create a parking demand analysis. The analysis was not ready at the time of this report and the applicant requested a delay to the October 18<sup>th</sup> hearing date to permit sufficient time to generate the report for consideration (**Attachment C**). There are no changes to the report.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

Sec.51P-621.110(D) Special exception. The board of adjustment may grant a special exception of up to 50 percent of the required off-street parking upon the findings and considerations listed in Section 51A-4.311. The board of adjustment may impose conditions on the special exception.

Section 51A-4.311 of the Dallas Development Code states the following:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article *if the board finds*, after a public hearing, that *the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets*. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:

- (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
- (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this request for a special exception to the parking demand since the basis for this type of appeal is whether the board finds the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special



exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

To assist the board in its decision-making, the Transportation Development Services Senior Engineer reviewed the area of request and information provided by the applicant (**Attachments A1, A2**). A comment sheet (**Attachment B**) submitted in review of the request states, “no objections”

**BACKGROUND INFORMATION:**

**Zoning:**

|               |                             |
|---------------|-----------------------------|
| <u>Site:</u>  | Conservation District No. 7 |
| <u>East:</u>  | Conservation District No. 7 |
| <u>South:</u> | Conservation District No. 7 |
| <u>West:</u>  | Conservation District No. 7 |
| <u>North:</u> | Conservation District No. 7 |

### **Land Use:**

The subject site is developed with a one-story restaurant without drive-in or drive-through service use. Surrounding uses include residential uses to the north and south, and personal service uses to the east and west.

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

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

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

The purpose of this request for a special exception to the off-street parking regulations of two spaces (or an 18-percent reduction of the parking spaces required) is to maintain an existing structure proposed to operate as a restaurant without a drive-in or drive-through service use and provide eight parking spaces on-site and one delta credit for a total of nine parking spaces technically provided.

The property is zoned CD No. 7, the Bishop Eighth Conservation District, which requires the following off-street parking to be provided:

- one space for each 220 square feet of floor area for a retail or restaurant without a drive-in or drive-through service use

Therefore, the proposed 2,484-square-foot restaurant without a drive-in or drive-through service use will require a total of eleven off-street parking spaces on-site.

The Transportation Development Services Senior Engineer has no objection to the request subject to special conditions noted (**Attachment B**).

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

- The parking demand generated by the restaurant without drive-in or drive-through service use on the site does not warrant the number of off-street parking spaces required, and
- The special exception of two spaces (or an 18-percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

As of September 9, 2022, no letters have been received regarding this request.

If the board were to grant this request a condition may be imposed that the special exception of two spaces shall automatically and immediately terminate if and when a restaurant without a drive-in or drive-through service use is changed or discontinued.

### Timeline:

- June 21, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- July 11, 2022: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 11, 2022: The Board Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the July 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- July 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. The review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Chief Planner, the Development Services Conservation District Senior Planner, and the Board of Adjustment Senior Planner.
- July 27, 2022: The representative submitted evidence for staff consideration **(Attachment A1-A2)**.
- August 1, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet marked “no objection to the request” **(Attachment B)**.
- August 16, 2022: Panel A held this case to September 20<sup>th</sup> at the applicant’s request.
- August 31, 2022: The applicant requested a hold to October 18<sup>th</sup> **(Attachment C)**.

### DRAFT MINUTES

BOARD OF ADJUSTMENT ACTION: August 16, 2022

APPEARING IN FAVOR: Samantha Renz 4100 International PI Ft. Worth, TX

APPEARING IN OPPOSITION:

Brooke Batson 612 Haines Ave. Dallas, TX

MOTION: Narey

I move that the Board of Adjustment in Appeal No. BDA 212-079 hold this matter under advisement until September 20, 2022.

SECONDED: Halcomb

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED (unanimously): 5-0

**BOARD OF ADJUSTMENT ACTION: September 20, 2022**

APPEARING IN FAVOR:

Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION:

MOTION: **Hayden**

I move that the Board of Adjustment in Appeal No. BDA 212-079 **hold** this matter under advisement until **October 18, 2022**.

SECONDED: **Halcomb**

AYES: 5 – Hayden, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED (unanimously): 5-0

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**FILE NUMBER:** BDA212-089(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Rebecca Bahr represented by Jeff Baron for a variance to the front yard setback regulations at 5000 East Side Avenue. This property is more fully described as Lot 1, Block 4/1418 and is zoned a D(A) Duplex District, which requires a front yard setback of 25 feet. The applicant proposes to construct a residential duplex structure and provide a five-foot front yard setback, which will require a 20-foot variance to the front yard setback regulations.

**LOCATION:** 5000 East Side Avenue

**APPLICANT:** Rebecca Bahr

**REPRESENTATIVE:** Jeff Baron

**REQUESTS:**

The request is made to permit development of a duplex on a small, triangular-shaped lot.

**STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the **front yard**, side yard, rear yard, lot width, lot depth, lot

coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

(A) 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.

(B) 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.

Rationale:

The applicant's representative submitted evidence (**Attachment A**) which shows the site is restrictive in size, irregular in shape, and severely encumbered with the required setbacks leaving little to develop in a manner commensurate to other lots with the same zoning.

The comparison to 11 other lots in the same zoning district show the lot is deficient, by no action of the property owner, and the request to build a 2,501-square-foot structure is commensurate or less than other properties in the vicinity with the same zoning.

#### **BACKGROUND INFORMATION:**

##### **Zoning:**

Site: D(A) Duplex District  
North: D(A) Duplex District  
East: D(A) Duplex District  
Southeast: D(A) Duplex District  
Southwest: MF-2(A) Multifamily District

**Land Use:**

The subject site is undeveloped. Surrounding properties contain a mix of residential uses including single family, duplex, and multifamily.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

The subject site is zoned a D(A) Duplex District which requires a 25-foot front yard setback. The parcel was originally subdivided in 1911 in a rectangular form with about 8,500 square feet of lot area, which has since been reduced for right of way expansion to a new lot area of 3,043 square feet in a triangular shape per a survey submitted by the applicant (**Attachment B**). The minimum lot size in the D(A) District is 6,000 square feet.

A site plan submitted with the application depicts a five-foot setback provided along the Munger Boulevard front yard. Due to the taking of right of way, the property is actually addressed on East Side Avenue, yet has little remaining frontage on that street. A floor plan submitted for review indicates the proposed structure will be a three-story duplex.

The applicant's representative submitted evidence (**Attachment A**) indicating the site is burdened with an irregular shape, highly restrictive size in general, as well as when compared to 11 other lots within three blocks of the subject site and with the same zoning. The average lot size is 9,045 square feet of area. The subject site is 66 percent smaller than the other lots. After setbacks, the 3,043-square-foot lot is left with a buildable area of 445 square feet. The 11 properties compared had an average structure size of 3,357 square feet. The applicant is proposing a 2,501-square-foot unit which is 34 percent smaller than the average.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same 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, no letters have been submitted regarding this request.

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

#### **Timeline:**

|                  |  |
|------------------|--|
| June 23, 2022:   | The applicant submitted an "Application/Appeal to the Board of Adjustment."  |
| July 26, 2022:   | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.  |
| 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 24, 2022: The applicant submitted evidence (**Attachment A**).

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.

September 2, 2022: The applicant submitted a survey (**Attachment B**).

**BOARD OF ADJUSTMENT ACTION: September 20, 2022**

APPEARING IN FAVOR: Jeff Baron 6440 North Central Expy. Dallas, TX

APPEARING IN OPPOSITION: None

**MOTION: Frankford**

I move that the Board of Adjustment, in Appeal No. BDA 212-089, on application of Rebecca Bahr represented by Jeff Baron, **deny** the variance to the front yard setback regulations requested by this applicant **with** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant

**SECONDED: Halcomb**

AYES: 5 – Hayden, Halcomb, Narey, Frankford, Neumann

NAYS: 0-

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

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**FILE NUMBER:** BDA212-061(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Efrain Gonzalez for variances to the front yard setback regulations at 3115 Borger Street. This property is more fully described as Lot 4A,



Block 4/7108, and is zoned an R-5(A) Single Family District, which requires a front yard setback of 20 feet. The applicant proposes to construct and maintain a nonresidential structure and provide a nine-foot front yard setback at Chicago Street, which will require an 11-foot variance to the front yard setback regulations and provide a 17-foot front yard setback at Borger Street, which will require a three-foot variance to the front yard setback regulations.

**LOCATION:** 3115 Borger Street

**APPLICANT:** Efrain Gonzalez

**REQUESTS:**

The request is made to alleviate encroachments from an existing nonconforming structure (Borger Street portion) and an addition made without permits (Chicago Street portion).

**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:

(C) In general.

- (iv) 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;
- (v) 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
- (vi) 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.

(D) 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:

- (vi) 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;
- (vii) 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;
- (viii) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (ix) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (x) the municipality considers the structure to be a nonconforming structure.

## **STAFF RECOMMENDATION:**

Denial.

### **Rationale:**

The evidence provided did not compare the size and development on parcels with the same zoning to prove the hardship or commensurate nature of the request. Therefore, staff cannot establish whether the subject site is restrictive in area, shape, or slope, and thus cannot be developed in a manner commensurate with other properties within the same zoning district.

It should be noted that the additional unnecessary hardship criteria of the variance standard do apply since the structure and half of the request are in existence and have been on the tax rolls; however, this argument was not made by the applicant.

## **BACKGROUND INFORMATION:**

### **Zoning:**

|               |                               |
|---------------|-------------------------------|
| <u>Site:</u>  | R-5(A) Single Family District |
| <u>North:</u> | R-5(A) Single Family District |
| <u>South:</u> | R-5(A) Single Family District |
| <u>East:</u>  | R-5(A) Single Family District |
| <u>West:</u>  | R-5(A) Single Family District |

### **Land Use:**

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

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

There have not been any related board or zoning cases in the vicinity within the last five years. However, on April 18, 2017, Panel A granted BDA167-046 at the subject site for special exceptions to the fence standards to construct and maintain a seven-foot-high fence in the required front yards.

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

The subject site is zoned R-5(A) Single Family District which requires a 20-foot front yard setback. The site is bounded by three streets (Borger Street, Pueblo Street, and Chicago Street) which all require 20-foot front yard setbacks. Pueblo Street, the shortest of the three frontages of the subject site, is always a front yard in this case. Chicago Street and Borger Street are the longer of the three frontages which are typically considered side yards; however, the site has additional front yard setbacks along these two longer street frontages to maintain continuity of the established blockface due to homes/lots to the south of the subject site fronting (providing a front yard and main access) on these streets.

According to DCAD records, the property contains a 2,430-square-foot church building erected in 1950. The site has an overall lot area of 20,590 square feet. The minimum lot size in the R-5(A) District is 5,000 square feet. Institutional uses like churches are allowed by right, subject to

the other requirements of the Dallas Development Code including parking, landscaping, and possible residential adjacency setbacks and screening.

The site plan originally submitted with the case back in May included objects (landscaping) within the visibility triangles. Additionally, there were issues with the parking depicted. The case was delayed prior to notification for the July docket. The applicant has submitted a site plan which was updated on August 17<sup>th</sup> to include a nonconforming portion of the existing building located three feet into the 20-foot setback along Borger Street (part of the revised application packet). Evidence was also provided on September 6<sup>th</sup> to clarify the elements of the request, noting that the previous contractor erected an addition on the Chicago Street frontage located 11 feet into required front yard setback without seeking permits from the City. The new contractor is attempting to rectify the issues and seeking variances to make the structure compliant (**Attachment A**). All obstructions and parking lot issues have been resolved.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same 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, the applicant had submitted four letters in support of the request and from within the notification area. No other letters have been submitted.

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

**Timeline:**

- May 6, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment.”
- July 1, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- 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 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. The case was recommended to be held to correct issues on the plan showing encroachments into the visibility triangles, landscaping deficiencies, and parking deficiencies.
- August 17, 2022: The board chief planner took over the case and checked on the status making contact with the applicant and staff. The case was set for the September Panel A docket. A revised site plan and BO report were issued to reflect an existing encroachment of the structure into the Borger setback, as well (**revised application packet**).
- September 6, 2022: The applicant submitted three forms of evidence (**Attachment A**) including a letter of clarification, a pictorial comparison to other church buildings, and four letters of support.

**BOARD OF ADJUSTMENT ACTION: September 20, 2022**

**APPEARING IN FAVOR:** Efrain Gonzalez 539 W. Commerce St. #3056. Dallas, TX

**APPEARING IN OPPOSITION:** None

**MOTION: Neumann**

I move that the Board of Adjustment, in Appeal No. BDA 212-061, on application of Efrain Gonzalez, **deny** the variance to the front yard setback regulations requested by this applicant **with** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

**SECONDED: Narey**

**AYES:** 5 – Hayden, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0-

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

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**FILE NUMBER:** BDA212-090(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Devan Pharis for a special exception to the landscaping regulations and for a variance to the parking regulations at 2420, 2414, and 2410 N. Henderson Avenue. This property is more fully described as Lots 4, 5, and 6, Block 1/1975 and is zoned Subarea 3 within Planned Development District No. 462, which requires mandatory landscaping and requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to operate a restaurant without drive-in or drive-through service use, and provide 14 of the required 34 parking spaces, which will require a 20-space variance (59 percent reduction) to the parking regulations.

**LOCATION:** 2420, 2414, and 2410 N. Henderson Avenue.

**APPLICANT:** Devan Pharis

**REQUEST:**

The applicant is seeking to redevelop the site with a restaurant use. The three lots would be combined, the existing structures utilized, and reduced parking and landscaping provided to meet the project needs.

**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:

- (E) In general.
- (xi) 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;
  - (xii) 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
  - (xiii) 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.
- (F) 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 (off-street parking variance):**

Denial.

Rationale:

As of September 9<sup>th</sup>, the applicant had failed to provide a parking demand study or any evidence showing the site is encumbered with a hardship which prohibits it from being developed in a manner commensurate to others with the same zoning.

To assist the board in its decision-making, the Transportation Development Services senior engineer reviewed the request and information provided by the applicant. A comment sheet was provided with states “no objection if certain conditions are met.” The conditions include:

1. Parking lot layout must comply with off-street parking dimensions.

2. Provide a parking demand study that justifies the request and evaluates the impact following a specific parking management plan.

NOTE: Abutting alley measures 10 feet and provides access to five residential properties.

**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 (landscape special exception):**

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 Development Services chief arborist does submit a technical opinion to aid in the board's decision-making. A memo regarding the applicant's request and stating objection to the request was provided with details of the assessment made (**Attachment A**). However, the applicant continued to revise the plan and resubmitted a plan on September 7<sup>th</sup> (**Attachment C**) which garnered an updated recommendation from the chief arborist of "no objection" (**Attachment D**).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: Subarea 3, PD No. 462  
Northwest: Subarea 3, PD No. 462  
Northeast: R-7.5(A) Single Family District  
Southeast: Subarea 3, PD No. 462  
Southwest: Subarea 3, PD No. 462 and MF-2(A) Multifamily District

### **Land Use:**

The subject site is developed with two unoccupied structures. The properties to the northwest and southeast are developed with retail and personal service uses. Additionally, properties to the northeast are developed with single-family uses and the properties to the southwest are developed with retail or personal service uses and multifamily.

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

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

1. BDA201-119: On December 13, 2021, Panel C granted a front yard setback variance on a site located to the north of the subject site.
2. BDA190-078: On September 23, 2020, Panel B granted front yard setback variances on a site located to the farther north of the subject site.
3. BDA178-088: On August 20, 2018, Panel C granted a front yard variance and fence height and opacity special exceptions, on a site located east of the subject site.
4. BDA178-080, BDA178-094, and BDA190-039: On May 21 and June 18, 2018, and May 18, 2020, Panel C denied a request for a variance to the height regulations on a site far west-northwest of the subject site. The final denial was with prejudice.

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

The subject site is zoned Subarea 3 within Planned Development District No. 462, which requires off-street parking requirements to be provided per Chapter 51A. Accordingly, per Sec. 51A-4.210(b)(24), a restaurant without drive-in or drive-through use off-street parking requirement is one space per 100 square feet of floor area.

The site is three lots which will require replatting to operate as one build site. This is acknowledged by the applicant in the application materials. Two of the existing lots contain structures. Per DCAD records, the following improvements exist:

- 2410 N. Henderson: a one-story, 3,337-square-foot structure built in 1969 with about 7,830 square feet of lot area.



- 2414 N.  
Henderson: a one-story, 1,124-square-foot structure built in 1930 with about 6,670 square feet of lot area.
- 2420 N.  
Henderson: an undeveloped 7,250-square-foot lot.

The total lot area is 21,750 square feet. Per the DCAD totals, the existing structures contain 4,461 square feet of floor area; however, the submitted site plan indicates the restaurant use will occupy only 3,400 square feet.

Per the off-street parking ratio, the 3,400-square-foot restaurant use proposed requires 34 off-street parking spaces. The applicant proposes to provide 14 parking spaces, which requires a variance for the reduction sought of 59 percent of the overall parking requirement. No evidence was submitted to indicate a hardship exists on the site. However, our senior engineer did provide a technical assessment (**Attachment B**) indicating no objection if certain conditions were met. Yet, as of September 9, 2022, no parking analysis was provided for review by staff.

The original application included a request for alley access for the nonresidential use. This is not permitted since the special exception is specific to allow for deliveries, not for primary access to a one-way parking lot. The layout of the parking was amended to allow for two-way traffic and no access onto the residential alleyway. This increased the variance request to reduce the parking, but made the site conforming to the alley access standards. The overall design standards for the parking lot will ultimately be confirmed at permit review; however, the applicant was guided to speak to the permit office now to ensure compliance for the submitted site plan.

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

- The parking demand generated by the restaurant without drive-in or drive-through use does not warrant the number of off-street parking spaces required; and,
- The variance of 20 spaces (or 59 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

Additionally:

- That granting the variance to the parking 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.

Finally, 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.

On the landscaping request, the chief arborist reviewed the initial submittal and indicated the following (**Attachment A**); however, it should be noted that a revised plan (**Attachment C**) was submitted which was found suitable by staff and garnered a recommendation of “no objection” on September 7<sup>th</sup> (**Attachment D**).

**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 as applied in PD 462. This ordinance also specifies the requirement of one tree for each 30 feet of linear frontage, exclusive of driveways, within the right-of-way.

**The chief arborist’s memo states the following with regard to “provision”:**

The proposed landscape plan (but not the site plan) provides for the identification of two large mature pecan trees and signifies the tree canopy coverage over the Property. The plan also identifies a proposed screening wall along the residential adjacency, a 10’ residential landscape buffer area for a portion of the property, and designated landscape areas with area calculations.

Article X: The existing large trees may qualify as required site trees.

**The chief arborist’s memo states the following with regard to “deficiencies”:**

The plan for the Property does not comply with Article X for a street buffer zone, the residential buffer zone to the rear, parking lot requirements (for lots with over 21 spaces), and landscape design options (10.126), being that they are not identified. The plan does not identify specific plant materials and locations and maintenance. Large, medium, and small trees should be specified in their general locations to indicate how they will function within the site, such as buffering the residences from the use or shading over a parking lot. A complete landscape submission is recommended. Maintenance provisions must be indicated.

The alternative landscape plan identifies two trees which may qualify as multiple site trees for compliance if the trees are adequately protected from damages and failure. A professional assessment has not been offered (or required) regarding the condition of the trees to comment on their suitability.

A building is proposed to be retained within the residential buffer zone and the parking configuration encroaches into the buffer as well.

The street buffer zone is only determined for the western third of the Property frontage only. The PD 462 required parkway trees are not identified on the proposed plan. It is possible the parkway trees may not be planted if a parkway landscape permit cannot be attained, but this is to be determined by permit review. Until that point, the location of such trees should be specified on the alternative plan.

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

The chief arborist does object to the proposed alternative landscape plan for being incomplete. The plan must present specific plant materials within the designated landscape areas for a proper assessment of how the plan will compare to the PD 462 and Article X landscaping standards. If the board chooses to approve the plan, the location and specifics of trees and other vegetation the applicant chooses to apply to the landscape areas will not be assigned for staff review and inspection. However, the parkway trees will still be required.

The revised and combined site/landscape plan (**Attachment C**) submitted via email on September 7<sup>th</sup> was found to be much more acceptable for mitigating landscaping deficiencies and produced a recommendation of "no objection" (**Attachment D**).

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

If the board grants the variance to the off-street parking requirements and/or special exception to the landscaping regulations and imposes the submitted revised site/landscape plan as a condition, development would be limited to the number of off-street parking spaces shown on this document rather than the precise location of the off-street parking spaces. The same is true of the landscaping indicated on the plan. Granting this variance and special exception will not provide any relief to the Dallas Development Code regulations.

**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 A.   |
| 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. The chief arborist submitted a review of the initially submitted alternate landscape plan (**Attachment A**).

August 29, 2022: The Transportation Development Services Senior Engineer provided a review comment sheet (**Attachment B**).

September 7, 2022: A revised site/landscape plan was submitted (**Attachment C**). The Development Services Chief Arborist provided staff with a revised recommendation (**Attachment D**).

**BOARD OF ADJUSTMENT ACTION: September 20, 2022**

**APPEARING IN FAVOR:** Devan Pharis 1537 Singleton Blvd. Dallas, TX  
Matt Peterson 1537 singleton Dallas, TX

**APPEARING IN OPPOSITION:** Rick Bentley 5551 Vickery Blvd. Dallas, TX  
Mark Rieves 5530 Goodwin Ave. Dallas, TX  
Mark Meyer 2403 Madera St. Dallas, TX  
Bruce Richardson 5607 Richmond Dallas, TX

**MOTION#1: Halcomb**

I move that the Board of Adjustment, in Appeal No. BDA 212-090, on application of Devan Pharis, **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: Narey**

AYES: 5 – Hayden, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED (unanimously): 5-0

MOTION#2: Frankford

I move that the Board of Adjustment, in Appeal No. BDA 212-090, on application of Devan Pharis, **deny** the variance to the parking regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

SECONDED: Hayden

AYES: 5 – Hayden, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED (unanimously): 5-0

\*\*\*\*\*  
MOTION: Neumann

I move to adjourn the Panel A hearing

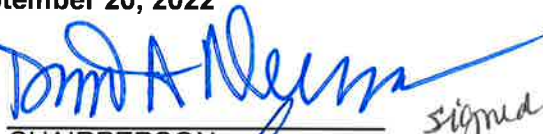

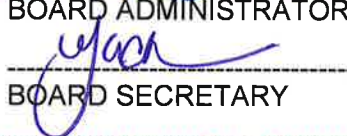
SECONDED: Halcomb

AYES: 5 – Hayden, Halcomb, Narey, Frankford, Neumann

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

**4:05 P.M.** Board Meeting adjourned for **September 20, 2022**

  
CHAIRPERSON  
  
BOARD ADMINISTRATOR  
  
BOARD SECRETARY  
signed: 10/18/22

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