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**CITY SECRETARY
DALLAS, TEXAS**

BOARD OF ADJUSTMENT

Panel C Minutes

April 15th, 2024



6ES Briefing Room
24957316190@dallascityhall.webex.com

Robert Agnich, Vice-Chair

PRESENT: [5]

Robert Agnich, VC	
Rodney Milliken	
Jared Slade	
Judy Pollock	
Roger Sashington	

ABSENT: [0]

Vice-Chair Agnich called the briefing to order at **10:32 A.M.** with a quorum of the Board of Adjustment present.

Vice-Chair Agnich called the hearing to order at **1:02 P.M.** with a quorum of the Board of Adjustment present.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

PUBLIC SPEAKERS

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

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

MISCELLANEOUS ITEMS

Approval of the Board of Adjustment Panel C, March 18th, 2024, Minutes.

A motion was made to approve Panel C, March 18th, 2024, Public Hearing minutes.

Maker:	Roger Sashington				
Second:	Robert Agnich				
Results:	5-0 unanimously				Motion to approve
		Ayes:	-	5	Robert Agnich, Judy Pollock, Roger Sashington, Rodney Milliken, and Jared Slade
		Against:	-	0	

UNCONTESTED ITEMS

1. 1902 Lakeland Road

***This case was moved to Individual Items**

BDA234-026(CJ)

BUILDING OFFICIAL'S REPORT Application of Rotem Fartook for **(1)** a special exception to the fence height regulations at 1902 LAKELAND DR. This property is more fully described as Block 16/5243 Lot 1A, and is zoned R-7.5(A), which limits the height of a fence in the front-yard to 4-feet. The applicant proposes to construct and/or maintain an 8-foot high fence in a required front-yard facing San Leandro Drive, which will require **(1)** a 4-foot special exception to the fence regulations.

LOCATION: 1902 Lakeland Dr.

APPLICANT: Rotem Fartook

REQUEST:

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

STANDARD OF REVIEW FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

Special Exception (1):

No staff recommendation is made on this or any request for a special exception.

BACKGROUND INFORMATION:

Zoning:

Site: R-5 (A) (Single Family District)
North: R-5 (A) (Single Family District)
East: R-5 (A) (Single Family District)
South: R-10 (A) (Single Family District)
West: R-5 (A) (Single Family District)

Land Use:

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

Square Footage:

No BDA history

GENERAL FACTS/STAFF ANALYSIS:

- The application Rotem Fartook, for the property located at 1902 Lakeland Drive focuses on 1 request relating to the fence height regulations.
- The applicant proposes to construct and maintain an 8-foot-high fence in a required front yard facing San Leandro Drive, which will require a 4-foot special exception to the fence height regulations.
- The subject site along with properties to the north, east, south, and west are all developed with single-family homes.
- As gleaned from the submitted site plan and elevations, the applicant is proposing to construct and maintain an 8-foot-high fence around the back and along a portion of the front yard of the property at 1902 Lakeland Drive.
- The applicant has stated that the proposed 8-foot fence will be an addition for privacy and security around the properties swimming pool area.
- Based upon staff's analysis of the surrounding properties, there are a few homes along San Leandro Drive with fences and gates in the required front yard and/or some form of vegetation serving as a screening mechanism.
- It is imperative to note that the subject site is a corner lot, and it has double street frontage and front yards on San Leandro Drive and Lakeland Drive due to block face continuity.
- 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.
- Granting the special exceptions to the fence standards relating to height regulations with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.

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Timeline:

January 22, 2024: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 12, 2024: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **C**.

February 21, 2024: The Development Services Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 23, 2024, deadline to submit additional evidence for staff to factor into their analysis; and March 8, 2024, 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.

February 26, 2024: The applicant requested to postpone case to the April docket

April 1, 2024: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the April public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Board of Adjustment Senior Planner, Project Coordinator, Board Secretary, Conservation District Chief Planner, Chief Arborists, Zoning Senior Planner and Transportation Engineer

Speakers:

For: Rotem Fartook, 1902 Lakeland Dr., Dallas TX 75218

Against: No Speakers

Motion # 1

I move that the Board of Adjustment, in Appeal No. BDA 234-026, on application of Rotem Fartook, **GRANT** the request of this applicant to construct and/or maintain a 8-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 height and fence location requirements illustrated in the most recent version of all submitted plans are required.

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Maker:	Jared Slade				
Second:	Robert Agnich				
Results:	3-2				Motion to grant <u>fails</u>
		Ayes:	-	3	Roger Sashington, Jared Slade, and Robert Agnich
		Against:	-	2	Judy Pollock, Rodney Milliken

Motion # 2

I move that the Board of Adjustment, in Appeal No. BDA 234-026, on application of Rotem Fartook, **DENY** the special exception requested by this applicant to construct and/or maintain a 8-foot high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

Maker:	Rodney Milliken				
Second:	Judy Pollock				
Results:	4-1				Motion to deny
		Ayes:	-	4	Roger Sashington, Jared Slade, Judy Pollock and Rodney Milliken
		Against:	-	1	Robert Agnich

2. 5511 Park Lane

BDA234-042(KMH)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin for a special exception to the fence height regulations at 5511 Park Ln. This property is more fully described as Block B/5592, Lot 6 and is zoned R-1ac(A), which limits the height of a fence in the front-yard to 4-feet. The applicant proposes to construct and/or maintain an 8-foot high fence in a required front-yard, which will require a 4-foot special exception to the fence regulations.

LOCATION: 5511 Park Ln.

APPLICANT: Rob Baldwin

REQUEST:

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

STANDARD OF REVIEW FOR A SPECIAL EXCEPTION TO FENCE HEIGHT STANDARDS REGULATIONS:

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

STAFF RECOMMENDATION:

Special Exception:

No staff recommendation is made on this or any request for a special exception.

BACKGROUND INFORMATION:

BDA History:

No BDA history

Square Footage:

This lot contains 51,710.81 of square feet.

This lot is zoned R-1ac(A) which requires a minimum lot size of 1 acre or 43,560 square feet.

Zoning:

Site: R-1ac (A)

North: R-1ac (A)

East: R-1ac (A)

South: R-1ac (A)

West: R-1ac (A)

Land Use:

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

GENERAL FACTS/STAFF ANALYSIS:

- The application of Rob Baldwin for the property located at 5511 Park Lane focuses on one specific request relating to the fence height regulations.
- The subject site is situated on a corner lot and is developed with a single-family home. The surrounding properties are also developed with single-family homes.
- The applicant proposes to construct and maintain an 8-foot high fence in a required front yard. The proposed fence is expected to be constructed of decorative iron with masonry columns.
- As gleaned from the submitted elevations, the fence panels measure approximately 6-feet in height and the fence columns measure roughly 6-feet and 8-inches in height.
- Additionally, the fence does include 2 entrance gates at each drive approach measuring roughly 8-feet in height.
- Although outside the scope of this request, it is important to note that there is an existing stone wall on the subject site along Holloway Road measuring at 4-feet. There is also an existing 7-foot wood screening fence located along the eastern perimeter of the subject site.
- The applicant has stated the proposed request is in keeping with other fences in the immediate area of the subject site.
- Based upon staff's analysis of the surrounding properties, there are a few homes along Park Lane with fences and gates at the drive approaches and/or some form of vegetation serving as a screening mechanism.

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- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations will not adversely affect the neighboring properties.
- Granting the special exception relating to the fence height regulations with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.
- [BDA234-042 at 5511 Park Lane](#) 200' Radius Video

Timeline:

February 23, 2024: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 11, 2024: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **C**.

March 22, 2024: The Development Services Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 27, 2024, deadline to submit additional evidence for staff to factor into their analysis; and April 5, 2024, deadline to submit additional evidence to be incorporated into the board's docket materials.
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 1, 2024: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the April public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Board of Adjustment Senior Planner, Project Coordinator, Board Secretary, Board Attorney, Conservation District Chief Planner, Chief Arborists, Zoning Senior Planner and Transportation Engineer.

Speakers:

For: No Speakers

Against: No Speakers

Motion

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 234-042 – Application of Rob Baldwin, for a special exception to the fence height regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with height and fence location requirements illustrated in the most recent version of all submitted plans are required.

Maker:	Roger Sashington				
Second:	Judy Pollock				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Robert Agnich, Judy Pollock, Roger Sashinton, Rodney Milliken, Jared Slade
		Against:	-	0	

3. 6242 Walnut Hill Lane

BDA234-043(CJ)

BUILDING OFFICIAL’S REPORT Application of Sachin Patel for a special exception to the fence height regulations, and for a special exception to the fence opacity regulations at **6242 Walnut Hill Ln.** This property is more fully described as Block B/5479, Lot 4, and is zoned R-10(A), which limits the height of a fence in the front yard to 4-feet and requires a fence panel with a surface area that is less than 50 percent open not be located less than 5-feet from the front lot line. The applicant proposes to construct and/or maintain a 6-foot-high fence in a required front yard, which will require **(1)** a 2-foot special exception to the fence height regulations, and to construct a fence in a required front-yard with a fence panel having less than 50 percent open surface area located less than 5-feet from the front lot line, which will require **(2)** a special exception to the fence opacity regulations.

LOCATION: 6242 Walnut Hill Ln.

APPLICANT: Sachin Patel

REQUESTS:

- (3) A request for a special exception to the fence height regulations; and
- (4) A special exception to the fence standards regulations regarding opacity

STANDARD OF REVIEW FOR A SPECIAL EXCEPTION TO FENCE HEIGHT STANDARDS REGULATIONS:

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

STANDARD OF REVIEW FOR A SPECIAL EXCEPTION TO FENCE OPACITY STANDARD REGULATIONS:

Section 51A-4.602(d)(3) of the Dallas Development Code states that the board may grant a special exception to the visual obstruction regulations when in the opinion of the board, **the special exception will not adversely affect neighboring property.**

STAFF RECOMMENDATION:

Special Exceptions (2):

No staff recommendation is made on this or any request for a special exception to the fence regulations regarding height and opacity 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:

BDA History: _

No BDA history

Square Footage:

This lot contains 7,535.88 of square feet

This lot is zoned R-10(A) which has a minimum lot size of 10,000 square feet.

Zoning:

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

Land Use:

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

GENERAL FACTS/STAFF ANALYSIS:

- The application, for the Sachin Patel property located at 6242 Walnut Hill Lane focuses on 2 requests relating to the fence height and fence standards regarding opacity.
- The applicant proposes to construct and maintain and 6-foot-high stucco fence in a required front yard, which will require a 2-foot special exception to the fence height regulations.
- Secondly, the applicant is requesting a special exception to the fence standards regulations regarding opacity
- The subject site along with properties to the north, east, south, and west are all developed with single-family homes.
- As gleaned from the submitted site plan and elevations, the applicant is proposing to construct and maintain a 6-foot-high fence in the front yard of the property at 6242 Walnut Hill Ln.
- Per the applicant, the proposed fence will match the stucco fences that sit in the front yards of properties immediately East of the subject site on Walnut Hill Lane; a visualization of this can be found in the top right corner of the provided site plan.

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- It is imperative to note that the subject site is a mid-block lot, and it has single street frontage on Walnut Hill Lane.
- Based upon staff's analysis of the surrounding properties, there are a few homes along Walnut Hill Lane with fences and gates in the front yard and/or some form of vegetation serving as a screening mechanism.
- The applicant has stated that the purpose of the special exception request is to provide privacy, security, and noise reduction on Walnut Hill; Walnut Hill Lane is a well-traveled thoroughfare in Dallas.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The Dallas Development Code also states that no fence panel having less than 50 percent open surface area may be located less than 5-feet from the lot line.
- The applicant has the burden of proof in establishing that the special exception(s) to the fence regulations regarding height and opacity will not adversely affect the neighboring properties.
- Granting the special exceptions to the fence standards relating to height and/or opacity regulations with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.

Timeline:

February 23, 2024: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 11, 2024: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.

March 20, 2024: The Development Services Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 27, 2024, deadline to submit additional evidence for staff to factor into their analysis; and April 5, 2024, deadline to submit additional evidence to be incorporated into the board's docket materials.
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 1, 2024: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the April public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Board of Adjustment Senior Planner, Project Coordinator, Board Secretary, Conservation District Chief Planner,

Chief Arborists, Zoning Senior Planner and Transportation Engineer.

Speakers:

For: Sachin Patel, 6242 Walnut Hill Ln., Dallas TX 75230 (Did not speak)

Against: No Speakers

Motion

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 234-043 – Application of Sachin Patel, for a special exception to the fence height regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with height and fence location requirements illustrated in the most recent version of all submitted plans are required.

BDA 234-043 – Application of Sachin Patel, for a special exception to the fence opacity regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with opacity and fence location requirements illustrated in the most recent version of all submitted plans are required.

Maker:	Roger Sashington				
Second:	Judy Pollock				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Robert Agnich, Judy Pollock, Roger Sashinton, Rodney Milliken, Jared Slade
		Against:	-	0	

HOLDOVER CASES

4. 1426 Morrell Avenue

BDA234-032(CJ)

BUILDING OFFICIAL’S REPORT: Application of Jonathan Martinez for **(1)** a special exception to the side-yard setback regulations, and for **(2)** a variance to the side-yard setback regulations, and for **(3)** a variance to the floor area ratio at 1426 Morrell Ave. This property is more fully described as Block 26/3587, Lot 7, and is zoned R-5(A), which requires a side-yard setback of 5-feet, and prohibits the floor area of an accessory structure from exceeding 25% of the floor area of the main structure. The applicant proposes to construct and/or maintain a carport for a single-family residential dwelling in a required side-yard and provide **(1)** a 1-foot setback, which will require a 4-foot special exception to the side-yard setback regulations; and to construct and/or maintain a single-family residential detached accessory structure and provide a 2-foot 8-inch side-yard setback, which will require **(2)** a 2-foot 4-inch variance to the side-yard setback regulations; and to construct and/or maintain a single-family residential detached accessory structure with 362 square feet of floor area (28% of the 1282 square foot floor area of the main structure), which will require **(3)** a

41.5 square foot variance to the floor area regulations.

LOCATION: 1426 Morrell Ave.

APPLICANT: Jonathan Martinez

REPRESENTED BY:

REQUEST:

- (1) A request for a special exception to the side-yard setback regulations for a carport for single-family residential use.
- (2) A request for a variance to the side-yard setback regulations
- (3) A variance to the floor area ratio regulations to construct and/or maintain a detached accessory structure, not for rent, on a site developed with a single-family home.

STANDARD OF REVIEW FOR A SPECIAL EXCEPTION TO THE SIDE YARD SETBACK REGULATIONS FOR CARPORTS:

Section 51A-4.402(1)(c)(6)(1) of the Dallas Development Code specifies that the board may grant a special exception to the minimum side yard requirements in this section for a carport for a single family or duplex use when, in the opinion of the board, **the carport will not have a detrimental impact on surrounding properties.**

Section 51A-4.402(1)(c)(6)(2) In granting this type of special exception, the board shall consider the following:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) The suitability of the size and location of the carport.
- (D) The materials to be used in construction of the carport

STANDARD OF REVIEW FOR A VARIANCE:

Section 51A-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, **side yard**, rear yard, lot width, lot depth, lot coverage, **floor area for structures accessory to single-family uses**, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) **not contrary to the public interest** when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- (B) **necessary to permit development of a specific parcel of land** that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) **not granted to relieve a self-created or personal hardship**, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

ELEMENT II SUBSTITUTE

Dallas Development Code §51A-3.102(d)(10)(b), formerly known as HB 1475, allows for the BDA to use their discretion and consider Element 2 of the Variance standard to be met, if:

- (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:

- 1. **1st Request** - Special Exception to the side yard setback regulations for a carport for single-family residential use:

No staff recommendation is made.

- 2. **2nd Request** - Variance to the side-yard setback regulations:

Denial

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

- A. Not contrary to the public interest as no letters of opposition were received.
- B. Not restrictive in area due to the lot size (6804.072 sqft); The minimum lot area for residential use in the R-5(A) zoning district is 5,000 sqft therefore, the property can be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- C. Is not a self-created or personal hardship.

- 3. **3rd Request** - Variance to the floor area regulations:

Denial

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

- A. Not contrary to the public interest as no letters of opposition were received.
- B. Not restrictive in area due to the lot size (6804.072 sqft); The minimum lot area for residential use in the R-5(A) zoning district is 5,000 sqft therefore, the property can be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- C. Is not a self-created or personal hardship.

BACKGROUND INFORMATION:

Zoning:

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

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

Land Use:

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

Square Footage:

This lot contains 6804.072 of square feet.

This lot is zoned R-5(A) which has a minimum lot size of 5,000 square feet.

BDA History:

No BDA history found within the last 5 years.

GENERAL FACTS/STAFF ANALYSIS:

- The application of Jonathan Martinez for the property located at 1426 Morrell Avenue focuses on three specific requests. The first request is a special exception to the side yard setback regulations for a carport for a single-family use. The second request focuses on a variance to the floor area ratio regulations. Lastly, the third request focuses on a variance to the side yard setback regulations.
- The applicant has stated that the requests for variances and a special exception were submitted to create enough parking space on the subject site and to protect vehicles from heavy storms.
- It is imperative to note that the subject site has single street frontage on Morrell Avenue.
- Per the applicant and provided site plan, the carport and single-family residential detached accessory structure are proposed and not existing.

1st Request (Special Exception to Side Yard Setback Regulations)

- A request for a special exception, to the side yard setback regulations, of 1-foot is made to construct and/or maintain a carport for single-family residential structure.
- The subject site is currently developed with a residential structure.
- Zoning District R-5(A) requires a minimum side-yard setback of 5-feet.
- As gleaned from the submitted site plan, the proposed renovations to the existing subject site encroach into the 5-foot required side yard setback.

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

- The applicant has the burden of proof in establishing that the special exception(s) to the side yard setback regulations for a carport for a single-family residential structure will not adversely affect the neighboring properties.
- Granting the special exception to the side yard setback regulations relating to carports for single-family residential structures with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.

2nd Request (Variance to Floor Area Ratio)

- The applicant proposes to construct a detached accessory structure (NFR), which will require a special exception to the floor area ratio regulations.
- Secondly, the applicant proposes to construct and/or maintain a 362 square foot single-family residential accessory structure (not for rent) which exceeds 25% of the main structure. The square footage of the main structure is 1,282. Therefore, a 41.5 square foot (28%) variance is required.
- The Dallas Development Code states that an accessory structure may not exceed 25% of the floor area of the main structure.
- According to the applicant's application, the detached accessory structure unit will be utilized as a detached garage.
- The applicant has the burden of proof in establishing that the accessory structure will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- Granting this variance request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e., development on the site must meet all required code requirements).

Moreover, the applicant has the burden of proof in establishing the following:

- That granting the variance to the floor area ratio will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

3rd Request (Variance to Side-Yard Setback Regulations)

- A request for a variance to the side yard setback regulations of 2-feet 4-inches is made to construct and/or maintain a single-family residential structure.
- The subject site is currently developed with a residential structure.
- Zoning District R-5(A) requires a minimum side-yard setback of 5-feet.
- As gleaned from the submitted site plan, the proposed renovations to the existing subject site encroach into the 5-foot required side yard setback.

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

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

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- The variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

The board may also consider Dallas Development Code **§51A-3.102(d)(10)(b)**, formerly known as **HB 1475** as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code.
 - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur.
 - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement.
 - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (e) the municipality considers the structure to be a nonconforming structure.
- Granting the proposed 2-feet 4-inch variance to the side yard setback regulations with a condition that the applicant complies with the submitted site plan, would require the proposal to be constructed as shown on the submitted documents.
 - Granting the proposed 41.5 square foot variance to the floor are regulations with a condition that the applicant complies with the submitted site plan, would require the proposal to be constructed as shown on the submitted documents.
 - 200' Radius Video: [BDA234-032 1426 Morrell Ave.](#)

Timeline:

- January 12, 2024: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 21, 2024: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **C**.
- February 15, 2024: The Development Services Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 23, 2024, deadline to submit additional evidence for staff to factor into their analysis; and March 8, 2024, 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.
- March 5, 2024: The Board of Adjustment staff review team meeting was held regarding this

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request and other requests scheduled for the March public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Board of Adjustment Senior Planner, Project Coordinator, Board Secretary, Conservation District Chief Planner, Chief Arborists, Zoning Senior Planner and Transportation Engineer

March 18, 2024: The Board of Adjustment Panel **C** moved to hold this matter under advisement until April 15, 2024.

April 1, 2024: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the April public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Board of Adjustment Senior Planner, Project Coordinator, Board Secretary, Conservation District Chief Planner, Chief Arborists, Zoning Senior Planner and Transportation Engineer

Speakers:

For: Elias Rodriguez, 317 E. Jefferson Blvd., Dallas TX 75203
 (Virtual)

Against: No Speakers

Motion # 1

I move that the Board of Adjustment, in Appeal No. BDA 234-032, on application of Jonathan Martinez, **DENY** the special exception to the side-yard setback regulation for carports, requested by this applicant **without** prejudice, contained in the Dallas Development Code, as amended, because our evaluation of the property and testimony shows that granting the request will have a detrimental impact on surrounding properties.

Maker:	Roger Sashington				
Second:	Judy Pollock				
Results:	5-0				Motion to deny
		Ayes:	-	5	Judy Pollock, Rodney Milliken, Jared Slade, Robert Agnich and Roger Sashington
		Against:	-	0	

Motion # 2

I move that the Board of Adjustment, in Appeal No. BDA 234-032, on application of Jonathan Martinez, **DENY** the variance to the side-yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

Maker:	Roger Sashington				
Second:	Judy Pollock				
Results:	5-0				Motion to deny

		Ayes:	-	5	Judy Pollock, Rodney Milliken, Jared Slade, Robert Agnich and Roger Sashington
		Against:	-	0	

Motion # 3

I move that the Board of Adjustment, in Appeal No. BDA 234-032, on application of Jonathan Martinez, **DENY** the variance to floor area ratio regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

Maker:	Roger Sashington				
Second:	Judy Pollock				
Results:	5-0				Motion to deny
		Ayes:	-	5	Judy Pollock, Rodney Milliken, Jared Slade, Robert Agnich and Roger Sashington
		Against:	-	0	

INDIVIDUAL CASES

5. 310 Canada Drive

BDA234-046(CJ)

BUILDING OFFICIAL'S REPORT: Application of Audra Buckley for **(1)** a variance to the front-yard setback regulations; for **(2)** a variance to the off-street parking regulations; and for **(3)** a special exception to the visibility obstruction regulations at 310 CANADA DR. This property is more fully described as Block 2/7089, Lot 16 and is zoned R-5(A), which requires a front-yard setback of 20-feet; and requires a parking space must be at least 20-feet from the right-of-way line adjacent to a street or alley if the space is in an enclosed structure and if the space faces upon or can be entered directly from the street or alley; and requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain a single-family residential structure and provide a 5-foot front-yard setback, which will require **(1)** a 15-foot variance to the front-yard setback regulations; to construct and/or maintain a single-family residential structure with a setback of 5-feet, which will require **(2)** a variance of 15-feet to the off-street parking regulations; and to construct and/or maintain a single-family residential structure in a required visibility obstruction triangle, which will require **(3)** a special exception to the visibility obstruction regulation.

LOCATION: 310 Canada Dr.

APPLICANT: Audra Buckley

REQUEST:

- (4) A request for a variance to the front yard setback regulations.
- (5) A request for a variance to the off-street parking regulations.
- (6) A request for a special exception to the visual obstruction regulations.

STANDARDS OF REVIEW FOR A VARIANCE:

Section 51A-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the **front yard**, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single-family uses, height, minimum sidewalks, **off-street parking** or off-street loading, or landscape regulations provided that the variance is:

- (D) **not contrary to the public interest** when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- (E) **necessary to permit development of a specific parcel of land** that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (F) **not granted to relieve a self-created or personal hardship**, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

ELEMENT II SUBSTITUTE:

Dallas Development Code §51A-3.102(d)(10)(b), formerly known as HB 1475, allows for the BDA to use their discretion and consider Element 2 of the Variance standard to be met, if:

- (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.

STANDARD OF REVIEW FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION:

1. 1st Request - Variance to the front-yard setback regulations

Denial

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

- B. Is contrary to the public interest as:**
 - A. Letters of opposition were received.**

- B. Monetary: The variance poses the possibility of increasing the property value of homes in the neighborhood. Increased property value causes increased property taxes for residents of the established neighborhood.
 - C. Aesthetics: The proposed 3-level home does not fit in with the character of the neighborhood which has mostly single and two-story homes.
 - D. Aesthetics & Safety: The proposed size of the home in comparison to the size of the lot may be a case of overdevelopment which would not be an example of developing a piece of land to its best use.
 - E. Safety: The request to obstruct both visibility triangles on the small lot may constitute traffic hazards.
-
- B. Is restrictive in shape and area (1,742.4 sqft); The minimum lot are for residential use in the R-5(A) zoning district is 5,000 sqft, therefore, the property cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.
 - C. Is not a self-created or personal hardship.

2. 2nd Request - Variance to the off-street parking regulations

Denial

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

- A. Is contrary to the public interest as
 - A. Letters of opposition were received.
 - B. Monetary: The variance poses the possibility of increasing the property value of homes in the neighborhood. Increased property value might also lead to increased property taxes to residents of the established neighborhood.
 - C. Aesthetics: The proposed 3-level home does not fit in with the character of the neighborhood which has mostly single and two-story homes.
 - D. Aesthetics & Safety: The proposed size of the home in comparison to the size of the lot may be a case of overdevelopment which would not be an example of developing a piece of land to its best use.
 - E. Safety: The request to obstruct both visibility triangles on the small lot may constitute traffic hazards.
- A. Is restrictive in shape and area (1,742.4 sqft); The minimum lot are for residential use in the R-5(A) zoning district is 5,000 sqft, therefore, the property cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- B. Is not a self-created or personal hardship.

3. 3rd Request - Special Exception to the visual obstruction regulations

No staff recommendation is made on this or any request for a special exception.

BACKGROUND INFORMATION:

BDA History:

No BDA history found within the last 5 years.

Square Footage:

This lot contains 1,742.4 of square feet.

This lot is zoned R-5(A) which has a minimum lot size of 5,000 square feet.

Zoning:

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

Land Use:

The subject site is vacant. The areas to the south, east, and west are developed and being developed with single-family uses. Areas to the north are currently used for agricultural purposes.

GENERAL FACTS/STAFF ANALYSIS:

- The application for the Audra Buckley property located at 310 Canada Drive focuses on 3 requests relating to the front yard setback regulations, the off-street parking regulations as well as the visual obstruction regulations.
- A request for a variance to the front yard setback regulations of 15-feet is made to construct and/or maintain a single-family residential structure at 310 Canada Drive.
- Zoning District R-5(A) requires a minimum front yard setback of 20-feet.
- As gleaned from the submitted site plan, the proposed home is set to encroach 15-feet into the 20-foot required front yard setback at 310 Canada Drive.
- Secondly, a request for a variance to the off-street parking regulations of 15-feet is made to construct and/or maintain a single-family residential structure at 310 Canada Drive.
- A parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from the street or alley.
- Lastly, the applicant proposed to construct and/or maintain a single-family residential structure in a required visibility obstruction triangle which will require a special exception to the visibility obstruction regulations.
- Per Section 51A-4.602(d)(3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the board, the item will not constitute a traffic hazard.
- It is imperative to note that the subject site has single street frontage on Canada Drive.
- Based upon staff's analysis of the surrounding properties, the subject site is restrictive in size being only 1,742.4 sqft in the R-5(A) zoning district which has a minimum lot size of 5,000 sqft. Staff has also concluded that the triangular shape of the subject site is irregular.
- The subject site is currently vacant.

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

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- That granting the variance to the front yard setback and/or the variance to the off-street 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(s) are necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- The variance(s) would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.
- The applicant has the burden of proof in establishing that the special exception(s) to the visual obstruction regulations will not constitute a traffic hazard.

The board may also consider Dallas Development Code **§51A-3.102(d)(10)(b)**, formerly known as **HB 1475** as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- (f) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code.
 - (g) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur.
 - (h) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement.
 - (i) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (j) the municipality considers the structure to be a nonconforming structure.
- Granting the proposed 15-foot variance to the front yard setback regulations and/or the proposed 15-foot variance to the off-street parking regulations with a condition that the applicant complies with the submitted site plan, would require the proposal to be constructed as shown on the submitted documents.
 - Granting the special exception to the visual obstruction regulations with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.
 - 200' Radius Video: [BDA234-046 310 Canada Dr.](#)

Timeline:

- February 23, 2024: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 13, 2024: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **C**.
- March 20, 2024: The Development Services Department Senior Planner emailed the applicant the following information:
- an attachment that provided the hearing date and panel that will consider the application; the March 27 , 2024, deadline to submit additional evidence for staff to factor into their analysis; and April 5,

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2024, deadline to submit additional evidence to be incorporated into the board’s docket materials.

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 1, 2024: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the April public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Board of Adjustment Senior Planner, Project Coordinator, Board Secretary, Conservation District Chief Planner, Chief Arborists, Zoning Senior Planner and Transportation Engineer.

Speakers:

For: Audra Buckley, 1414 Belleview St. Suite 150, Dallas TX 75215
 Maria Lozada Garcia, 2422 Postbridge Rd., Grand Prairie TX 75050

Against: James Tomek, 3138 Pastor Street, Dallas, TX 75212
 Avery Tomek, 3138 Pastor Street, Dallas, TX 75212

Motion # 1

I move that the Board of Adjustment, in Appeal No. BDA 234-046, on application of Audra Buckley, **GRANT** the 15-foot variance to the front-yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the most recent version of all submitted plans are required.

Maker:	Roger Sashington				
Second:	Rodney Milliken				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Judy Pollock, Rodney Milliken, Jared Slade, Robert Agnich and Roger Sashington
		Against:	-	0	

Motion # 2

I move that the Board of Adjustment, in Appeal No. BDA 234-046, on application of Audra Buckley, **GRANT** the 15-foot variance to the off-street parking regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this

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property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the most recent version of all submitted plans are required.

Maker:	Roger Sashington				
Second:	Rodney Milliken				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Judy Pollock, Rodney Milliken, Jared Slade, Robert Agnich and Roger Sashington
		Against:	-	0	

Motion # 3

I move that the Board of Adjustment, in Appeal No. BDA 234-046, on application of Audra Buckley, **GRANT** the request to maintain items in the 20-foot visibility triangle on to Canada Drive as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

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

Compliance with the most recent version of all submitted plans are required.

Maker:	Roger Sashington				
Second:	Judy Pollock				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Judy Pollock, Rodney Milliken, Jared Slade, Robert Agnich and Roger Sashington
		Against:	-	0	

****Recess at 1:21 pm – 1:23 pm****

****Recess at 2:36 pm – 2:42 pm****

ADJOURNMENT

After all business of the Board of Adjustment had been considered, Vice-Chair Agnich moved to adjourn the meeting at **3:10 P.M.**

Mary Williams

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

5/20/2024

Date

Dr. Kameka Miller-Hoskins

Required Signature:
Dr. Kameka Miller-Hoskins – Chief Administrator
Development Services Dept.

5/20/2024

Date

Robert Agnich

Required Signature:
Robert Agnich, Vice-Chair
Board of Adjustment

5/20/2024

Date