



BOARD OF ADJUSTMENT

Panel B Minutes

March 20, 2024

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CITY SECRETARY
DALLAS, TEXAS

6ES Briefing Room
24974849659@dallascityhall.webex.com

Cheri Gambow, Vice-Chair

PRESENT: [5]

Cheri Gambow, VC (V)	
Sarah Lamb	
Joe Cannon	
Michael Karnowski	
Derrick Nutall (V)	

ABSENT: [0]

Assisting City Attorney Matthew Sapp called the briefing to order at 10:33 A.M. with a quorum of the Board of Adjustment present. Vice Chair Cheri Gambow was present virtually. It was proposed by Vice-Chair Cheri Gambow to elect a Presiding Officer for the briefing and hearing.

Vice Chair Gambow made a motion to elect Michael Karnowski as a temporary Presiding Officer, second by Derrick Nutall. It was voted unanimously to accept the motion.

Presiding Officer Michael Karnowski called the Public Hearing to order at 1:01 P.M. with a quorum of the Board of Adjustment present.

The Presiding Officer 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.

No Public Speakers

MISCELLANEOUS ITEMS

Approval of the Board of Adjustment Panel B, February 21st, 2024, meeting minutes.

Motion was made to approve Panel B, February 21st, 2024, public hearing minutes.

Maker:	Sarah Lamb				
Second:	Joe Cannon				
Results:	5-0 unanimously				Moved to approve
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb, Derrick Nutall
		Against:	-	0	

UNCONTESTED CASES

1. 4320 Blackheath Road

***This Case was moved to Individual Cases**
 BDA234-030(KMH)

BUILDING OFFICIAL'S REPORT: Application of Julia Gutierrez for (1) a special exception to the single-family use regulations at 4320 Blackheath Rd. This property is more fully described as Block F/6127, Lot 20, and is zoned R-7.5(A), which limits the number of dwelling units to one. The applicant proposes to construct and/or maintain an additional dwelling unit (NFR), which will require (1) a special exception to the single-family zoning use regulations.

LOCATION: 4320 Blackheath Rd.

APPLICANT: Julia Gutierrez

REQUEST:

(1) A request for a special exception to the single-family use regulations.

STANDARD OF REVIEW FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:

Section 51A-4.209(b)(6)(E)(i) of the Dallas Development Code specifies that the board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not:

- 1) be used as rental accommodations; or
- 2) adversely affect neighboring properties.

Section 51A-4.209(b)(6)(E)(ii) In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

STAFF RECOMMENDATION:

Special Exception:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

BDA History:

No BDA history found within the last five years.

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 is developed with a single-family home. The areas to the north, south, east, and west are developed with single-family homes.

BDA History:

No BDA history within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

- The application of Julia Gutierrez for the property located at 4320 Blackheath Rd. focuses on one specific request; a special exception to the single-family use regulations.
- The subject site is currently developed with a 2,884 sq. ft single-family home.
- The applicant proposes to construct an additional dwelling unit (ADU), not for rent (NFR), which will require a special exception to the single-family use regulations. The applicant states that the proposed ADU will be used for elderly family members, therefore it will not be rented out. The applicant also stated that the utilities will be tied into the main house, so there is no need for any additional utility meters.
- The proposed ADU is roughly 510 square feet and includes a kitchen, bedroom, living room, restroom and 1 closet space.
- The single-family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot and that the Board of Adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: (1) be use as rental accommodations; or (2) adversely affect neighboring properties.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.

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- Granting this special exception 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).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.
- [BDA234-030 at 4230 Blackheath](#) 200' radius video

Timeline:

- January 18, 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 B.
- February 16, 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 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.

Speakers:

For: Julia Gutierrez, 4320 Blackheath Rd., Dallas TX 75227

Against: No Speakers

Motion

I move that the Board of Adjustment, in request No. BDA 234-030, on application of Julia Gutierrez, **GRANT** the request to construct and maintain an additional dwelling unit on a site developed with a single-family structure as a special exception to the single-family use regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring properties.

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

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

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The applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

Maker:	Sarah Lamb				
Second:	Derrick Nutall				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb & Derrick Nutall
		Against:	-	0	

2. 9241 Midway Road

***This Case was moved to Individual Items**
 BDA234-039(KMH)

BUILDING OFFICIAL'S REPORT: Application of Rob Baldwin for (1) a special exception to the fence height regulations on Midway, and for (2) a special exception to the fence height regulations on Wilada Dr., and for (3) a special exception to the fence opacity regulations, and for (4) a variance to the front-yard setback regulations at 9241 MIDWAY RD. This property is more fully described as Block 5082, Parts of lots 6 and 7, and is zoned R-10(A), which limits the height of a fence in the front-yard to 4-feet; 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; and requires a front-yard setback of 30-feet. The applicant proposes to construct and/or maintain an 8-foot high fence in a required front-yard facing Midway, which will require (1) a 4-foot special exception to the fence regulations; to construct and/or maintain an 8-foot high fence in a required front-yard facing Wilada Dr., which will require (2) a 4-foot special exception to the fence regulations; to construct and/or maintain a board-on-board fence in a front-yard that requires a fence panel to have less than 50 percent open surface area when located less than 5-feet from the front lot line, which will require (3) a special exception to the fence opacity regulations; and to construct and/or maintain a single-family residential structure and provide an 11-foot 6-inch front-yard setback facing Walida Dr., which will require (4) an 18-foot 6-inch variance to the front-yard setback regulations.

LOCATION: 9241 Midway Rd.

APPLICANT: Rob Baldwin

REQUEST:

- (1) A request for a special exception to the fence height regulations on Midway Rd.;
- (2) A request for a special exception to the fence height regulations on Wilada Dr.;
- (3) A request for a special exception to the fence opacity regulations; and
- (4) A request for a variance to the front-yard setback 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.**

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

Section 51A-4.602(a)(11) of the Dallas Development Code states that the board may grant a special exception to the fence regulations when in the opinion of the board, **the special exception will not adversely affect neighboring property.**

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:

- **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.
- 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
- **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 **non-conforming structure.**

STAFF RECOMMENDATION:

Variance
Approval

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. Restrictive in shape and area as it is an irregularly shaped lot, a corner lot which requires two front yard setback requirements, and there are utility easements on the property; therefore it cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.

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C. Not self-created nor is it a personal hardship.

Special Exception:

Special Exceptions (3):

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

BDA HISTORY:

No BDA history found within the last 5 years.

Square Footage:

This lot contains 15,000.56 of square feet.

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

Zoning:

Site: R-10(A) Single Family District
North: R-10(A) Single Family District
South: TH-1(A); SUP 1718; PD 851; SUP 2399; CR
East: PD 70
West: R-10(A) Single Family District

Land Use:

The subject site is developed with a single family home. The areas to the north and west along Wilada are developed with single-family homes. The areas to the south and east along with Midway Rd. are developed with commercial uses.

GENERAL FACTS/STAFF ANALYSIS:

- The application of Rob Baldwin for the property located at 9241 Midway Rd focuses on 4 requests. The first request is for a special exception to the fence height regulations of 4-feet along Midway Rd. The applicant is proposing to construct and maintain an 8-foot high fence in a required front yard, which will require a 4-foot special exception to the fence height regulations.
- Secondly, the applicant is requesting a special exception to the fence height regulations of 4-feet along Wilada Dr. The applicant is proposing to construct and maintain an 8-foot high fence in a required front yard, which will require a 4-foot special exception to the fence height regulations.
- The applicant is also requesting a special exception to the fence standards regulations, where they are proposing to construct and maintain a board on board 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; therefore requiring a special exception to the fence standards regulations.
- And lastly, the applicant is proposing to construct and maintain a residential structure in the front yard providing only an 11-foot 6-inch front yard setback along Wilada Dr., which will require an 18-foot 6-inch variance to the front yard setback regulations.
- It is imperative to note that the subject site is a corner lot, which sits on both Wilada Dr. and Midway Rd. The need for the special request along both front yards is due to the continuity of the block face along both streets.
- As gleaned from the submitted elevations, the applicant is proposing an 8-foot cedar board on board fence in the required front yards along Wilada Dr. and Midway Rd.

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- As gleaned from the submitted site plan, the applicant is proposing to construct a new entry, covered patio as well as a new 2-car garage addition; therefore, requiring an adjustment to the front yard setback requirements.

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

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

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 variance to the front 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.

- Additionally, the applicant has the burden of proof in establishing that the special exceptions to the fence height and fence standards regulations will not adversely affect the neighboring properties.

- Granting the special exceptions (3) to the fence standards relating to fence height and opacity 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.

- BDA234-039 at 9241 Midway Rd (200' radius video)

Timeline:

January 21, 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

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Adjustment Panel B.

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 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.

Speakers:

For: Rob Baldwin, 3904 Elm Street # B, Dallas TX 75226
 Marilee McInnis, 9241 Midway Road, Dallas TX 75220

Against: No Speakers

Motion # 1

I move that the Board of Adjustment, in Appeal No. BDA 234-039, on application of Rob Baldwin, **GRANT** the request of this applicant to construct and/or maintain a 8-foot high fence on Midway Road 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.

Maker:	Sarah Lamb				
Second:	Joe Cannon				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb & Derrick Nutall
		Against:	-	0	

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Motion # 2

I move that the Board of Adjustment, in Appeal No. BDA 234-039, on application of Rob Baldwin, **GRANT** the request of this applicant to construct and/or maintain a 8-foot high fence on Wilada Drive 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.

Maker:	Sarah Lamb				
Second:	Joe Cannon				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb & Derrick Nutall
		Against:	-	0	

Motion # 3

I move that the Board of Adjustment, in Appeal No. BDA 234-039, on application of Rob Baldwin, **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 opacity and fence location requirements illustrated in the most recent version of all submitted plans are required.

Maker:	Sarah Lamb				
Second:	Joe Cannon				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb & Derrick Nutall
		Against:	-	0	

Motion #4

I move that the Board of Adjustment, in Appeal No. BDA 324-039, on application of Rob Baldwin, **GRANT** the 18-foot 6-inch 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.

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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:	Sarah Lamb				
Second:	Joe Cannon				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb & Derrick Nutall
		Against:	-	0	

INDIVIDUAL CASES

3. 718 S. Rosemont Avenue
 BDA234-027(CJ)

BUILDING OFFICIAL’S REPORT: Application of Isaiah Spates for (1) a variance to the floor area ratio regulations, and a (2) variance to the building height regulations at 718 S. Rosemont Ave. This property is more fully described as Block B/3535, Lot 11 and is zoned R-7.5(A), which prohibits an accessory structure from exceeding 25% of the floor area of the main structure, and which an accessory structure may not exceed the height of the main structure. The applicant proposes to construct and/or maintain a single-family residential accessory structure with 702 square-feet of floor area (39% of the 1801 square-foot floor area of the main structure), which will require (1) a 252 square foot variance to the floor-area-ratio regulations; and the applicant proposes to construct and/or maintain a single-family residential accessory structure with a height of 21-feet (midpoint), which will require (2) a 4-foot variance to the height regulations.

LOCATION: 718 S. Rosemont Ave.

APPLICANT: Isaiah Spates

REQUEST:

- (2) A variance to the floor area ratio is made to construct and/or maintain an additional dwelling unit, not for rent, on a site developed with a single-family home; and
- (3) A variance to the height regulations for a single-family residential accessory structure.

STANDARD OF REVIEW 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:

- **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.

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- 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
- **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 non-conforming structure.

STAFF RECOMMENDATION:

Variance to Floor Area Ration (1st Request):

Denial

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

- A. Not contrary to public interest as no opposition was received.
- B. Not restrictive in area due to the lot size (7,737 sqft); The minimum lot area for residential use in the R-7.5(A) zoning district is 7,500 sqft, therefore, the property can be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- C. Not a self-created/personal hardship.

Variance to the height regulations for a single-family residential accessory structure (2nd Request):

Denial

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

- A. Not contrary to public interest as no opposition was received.
- B. Not restrictive in area due to the lot size (7,737 sqft); The minimum lot area for residential use in the R-7.5(A) zoning district is 7,500 sqft, therefore, the property can be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- C. Not a self-created/personal hardship.

BDA History

No BDA history found within the last five years.

Square Footage:

The lot contains 7,737 of square feet.

The lot is zoned R-7.5(A) with a minimum lot size of 7,500 square feet.

Zoning:

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

Land Use:

The subject site is developed with a single-family home. The areas to the north, south, east, and west are developed with single-family uses.

BDA History:

No BDA history within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

- The application of Isaiah Spates for the property located at 718 S. Rosemont Avenue focuses on two specific requests. The first request is a variance to the floor area ratio regulations. The second request focuses on a variance to the height regulations for a single-family residential accessory structure.
- The Dallas Development code, for single-family zoning, allows one dwelling unit per lot.
- Secondly, the applicant proposes to construct and/or maintain a 702 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 1,801. Therefore, a 252 square foot (39%) 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 accessory structure will be utilized as a two-story detached garage.
- Secondly, the applicant proposes to construct a single-family residential accessory structure with a height of 21-feet (midpoint).
- The applicant has the burden of proof in establishing that the variance to the height regulations for a single-family residential accessory structure 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:

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- 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.

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.
- 200' Radius Video: [BDA234-027 718 S. Rosemont 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 9, 2024: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.
- 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.

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March 5, 2024

The Board of Adjustment staff review team meeting was held regarding this 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

Speakers:

For: Isaiah Spates, 718 S. Rosemont, Dallas TX 75208
 Alicia Del Fierro, 718 S. Rosemont, Dallas TX 75208

Against: No Speakers

Motion # 1

I move that the Board of Adjustment, in Appeal No. BDA 234-027, on application of Isaiah Spates, **GRANT** the 252 square-foot variance to the floor area ratio 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:	Sarah Lamb				
Second:	Derrick Nutall				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Derrick Nutall, Sarah Lamb
		Against:	-	0	

Motion # 2

I move that the Board of Adjustment, in Appeal No. BDA 234-027, on application of Isaiah Spates, **GRANT** the 4-foot variance to the height 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:	Sarah Lamb				
Second:	Joe Cannon				
Results:	5-0 Unanimously				Motion to grant

		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Derrick Nutall, Sarah Lamb
		Against:	-	0	

4. 5820 Palo Pinto Avenue
 BDA234-031(DB)

BUILDING OFFICIAL’S REPORT: Application of Elizabeth Kelly for (1) a variance to the rear-yard setback regulations at 5820 PALO PINTO AVE. This property is more fully described as Block 10/1890, Lot 7, and part of lot 6, and is zoned CD-12 (R-7.5(A)), which requires a rear-yard setback of 40-feet. The applicant proposes to construct and/or maintain a single-family residential structure and provide a 31-foot rear-yard setback, which will require (1) a 9-foot variance to the rear-yard setback regulations.

LOCATION: 5820 Palo Pinto Avenue

APPLICANT: Elizabeth Kelly

REQUEST:

(4) A request for a variance to the rear-yard setback regulation

STANDARD FOR A VARIANCE:

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

- **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.
- 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
- **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;

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- (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 non-conforming structure.

STAFF RECOMMENDATION:

Variance to the front yard setback:

DENIAL

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

- D. Not contrary to the public interest as no letters of opposition were received.
- E. Subject lot is not restrictive in shape, area, or slope, and can be developed in a manner commensurate with development upon other parcels of land in the same zoning district.
- F. Not self-created nor is it a personal hardship.

Square footage of Lot: 12,775 SF

BDA History:

No BDA history found within the last five years.

Zoning:

Site: CD12 (R-7.5(A)) Single Family District
North: CD12 (R-7.5(A)) Single Family District
South: CD12 (R-7.5(A)) Single Family District
East: CD12 (R-7.5(A)) Single Family District
West: CD12 (R-7.5(A)) Single Family District

Land Use:

The subject site is developed with a single-family home. The areas to the north, south, east, and west are developed with single-family homes.

BDA History:

No BDA history within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

- The application of Elizabeth Kelly for the property located at 5820 Palo Pinto Ave. focuses on one specific request; a variance to the rear-yard setback regulations
- The subject site is currently developed with a 2871sq. ft single-family home.
- The applicant proposes to construct and/or maintain an addition at the rear of the property, which will encroach into the rear-yard setback therefore requiring a variance to the rear-yard setback regulations.

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- The proposed project is 1115 sf ft and will be located at the rear of the property; this addition is intended to be an accessory dwelling unit, which is allowed by right in this district, per ordinance 31093, in accordance with the requirements for an accessory dwelling unit overlay in section 51A-4.510(c) , as amended.
- The board has the following powers and duties, which must be exercised in accordance with this chapter:

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:

(A) In general.

(i) the variance is 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) the variance is 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) the variance is not granted to relieve a self-created or personal hardship, nor for financial reasons only, except as provided in Subparagraph (B)(i), 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.

- Granting this variance request will not provide any relief to the Dallas Development Code regulations other than allowing a 9-foot variance to the rear-yard setback; compliance with submitted site plan and elevations will be required.
- BDA234-031 at 5820 Palo Pinto Ave. (200'radius video)

Timeline:

January 18, 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 B.

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.

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March 5, 2024: The Board of Adjustment staff review team meeting was held regarding this 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.

Speakers:

For: Elley Kelly, 5820 Palo Pinto Ave., Dallas TX 75206
 Rick Kelly, 5820 Palo Pinto Ave., Dallas TX 75206
 Melissa Kingston, 5901 Palo Pinto Ave., Dallas TX 75206

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 234-031, on application of Elizabeth Kelly, **GRANT** the 9-foot variance to the rear-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:	Sarah Lamb				
Second:	Joe Cannon				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Derrick Nutall, Sarah Lamb
		Against:	-	0	

5. 4722 S. Lindhurst Avenue
 BDA234-034(KMH)

BUILDING OFFICIAL'S REPORT: Application of Subbayya Yanamadala for (1) a special exception to the fence height regulations on Lennox Ln.; and for (2) a special exception to the fence height regulations on Lindhurst Ave.; and for (3) a special exception to the 45-foot visibility obstruction regulations at 4722 S. Lindhurst Ave. This property is more fully described as Block C/5531, Lot 3, and is zoned R-1ac(A), which limits the height of a fence in the front-yard to 4-feet and requires a 45-foot visibility triangle at street intersections. The applicant proposes to construct and/or maintain an 8-foot high fence in a required front-yard facing Lennox Ln., which will require (1) a 4-foot special exception to the fence regulations; and to construct and/or maintain a 6-foot high fence in a required front-yard facing S. Lindhurst Ave., which will require (2) a 2-foot special exception to the fence regulations; and to construct and/or maintain a single-family residential fence structure in a required 45-foot visibility obstruction triangle, which will require (3) a special exception to the visibility obstruction regulation.

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LOCATION: 4722 S. Lindhurst Ave.

APPLICANT: Subbayya Yanamadala

REQUEST:

1. A request for a special exception to the fence height regulations on Lennox Ln.,
2. A request for a special exception to the fence height regulations on Lindhurst Ave., and
3. A request for a special exception to the 45-foot visibility obstruction 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.**

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:

No staff recommendation is typically made on special exceptions. However, the Transportation Engineer has reviewed all pertinent documents pertaining to the visibility triangle obstruction and recommends denial for the visual obstruction at the intersection of Lennox Lane and S. Lindhurst Ave.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

BDA History:

No BDA history in the last five years.

GENERAL FACTS/STAFF ANALYSIS:

- The application of Subbayya Yanamadala for the property located at 4722 S. Lindhurst Ave. focuses on 3 requests. The first request is for a special exception to the fence height

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regulations of 4-feet along Lennox Lane. The applicant is proposing to maintain an 8-foot high fence in a required front yard, which will require a 4-foot special exception to the fence height regulations.

- Secondly, the applicant is requesting a special exception to the fence height regulations of 2-feet along S. Lindhurst Ave. The applicant is proposing to maintain a 6-foot high fence in a required front yard, which will require a 2-foot special exception to the fence height regulations.
- Additionally, the applicant is requesting a special exception to the visibility obstruction regulations. The applicant is proposing to maintain a residential fence structure in a required 45-foot visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation.
- The applicant states that the fence requests are needed for safety and security reasons.
- The subject site along with the surrounding properties are all developed with single family use.
- The subject site is also located on a corner lot at the intersections of Lennox Lane and S. Lindhurst Ave.
- As gleaned from the submitted site plan and elevations, the applicant is proposing to maintain an 8-foot high fence along Lennox Lane and a 6-foot high fence along S. Lindhurst. It is imperative to note that both fences intersect within the 45-foot visibility triangle at Lennox Lane and S. Lindhurst Ave.
- Roughly 26 linear feet of the existing fence at the intersection of Lennox Lane and S. Lindhurst lies within the 45-foot visibility triangle.
- The applicant has the burden of proof in establishing that both special exceptions to the fence regulations will not adversely affect the neighboring property.
- The applicant has the burden of proof in establishing that the special exception to the visual obstruction regulations does not constitute a traffic hazard.
- If the Board were to grant this special exception request and impose a condition that the applicant complies with the submitted site plan/elevation, the proposal of 8-feet in height along Lennox Lane and 6-feet in height along S. Lindhurst Ave would be limited to that what is shown on the submitted documents.
- Additionally, granting this request for a special exception to the visual obstruction regulations with a condition imposed that the applicant complies with the submitted site plan would limit the proposed fence in the 45-foot visibility triangles at the street intersections of Lennox Lane and S. Lindhurst Ave.
- BDA234-034 at 4722 S. Lindhurst 200' Radius Video

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

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Adjustment Panel B.

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 4, 2024: The Board of Adjustment staff review team meeting was held regarding this 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.

Speakers:

For: Subbayya Yanamadala, 4722 S. Lindhurst Ave., Dallas TX 75229

Against: No Speakers

Motion # 1

I move that the Board of Adjustment, in Appeal No. BDA 234-034, on application of Subbayya Yanamadala, **DENY** the special exception requested by this applicant to maintain items in the visibility triangle at the intersection of S. Lindhurst Avenue and Lennox Lane (with/without) prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

Maker:	Sarah Lamb				
Second:	Derrick Nutall				
Results:	4-0 Unanimously				Motion to deny
		Ayes:	-	4	Michael Karnowski, Joe Cannon, Derrick Nutall, Sarah Lamb
		Against:	-		

Motion # 2

I move that the Board of Adjustment, in Appeal No. BDA 234-034, on application of Subbayya Yanamadala, **GRANT** the request of this applicant to construct and/or maintain a 8-foot high fence on Lennox Lane as a special exception to the height requirement for fences contained in the Dallas

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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, not to include the portion in the visibility triangle, requirements illustrated in the most recent version of all submitted plans are required.

Maker:	Sarah Lamb				
Second:	Joe Cannon				
Results:	4-0 Unanimously				Motion to grant
		Ayes:	-	4	Michael Karnowski, Joe Cannon, Derrick Nutall, Sarah Lamb
		Against:	-	0	

Motion # 3

I move that the Board of Adjustment, in Appeal No. BDA 234-034, on application of Subbayya Yanamadala, **GRANT** the request of this applicant to construct and/or maintain a 6-foot high fence on Lindhurst Avenue 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, not to include the portion in the visibility triangle, illustrated in the most recent version of all submitted plans are required.

Maker:	Sarah Lamb				
Second:	Joe Cannon				
Results:	4-0 Unanimously				Motion to grant
		Ayes:	-	4	Michael Karnowski, Joe Cannon, Derrick Nutall, Sarah Lamb
		Against:	-	0	

Recess at 2:08 p.m. – 2:13 p.m.

ADJOURNMENT

After all business of the Board of Adjustment had been considered, Presiding Officer Michael Karnowski moved to adjourn the meeting at 2:53 p.m.

Maker:	Joe Cannon				
Second:	Derrick Nutall				
Results:	4-0 Unanimously				Motion to adjourn
		Ayes:	-	4	Michael Karnowski, Joe Cannon, Derrick

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Maker:	Joe Cannon				
Second:	Derrick Nutall				
Results:	4-0 Unanimously				Motion to adjourn
		Ayes:	-	4	Michael Karnowski, Joe Cannon, Derrick Nutall, Sarah Lamb
		Against:	-	0	

Mary Williams

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

4/17/2024

Date

Dr. Kameka Miller-Hoskins

Required Signature:
 Dr. Kameka Miller-Hoskins, Board Administrator
 Development Services Dept.

4/17/24

Date

Michael Karnowski

Required Signature:
 Michael Karnowski – Presiding Officer
 Board of Adjustment

4/17/2024

Date