

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE  
TUESDAY, JANUARY 18, 2022**

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

MEMBERS ABSENT FROM BRIEFING: None

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., LaTonia Jackson, Board Secretary, Robyn Gerard, Senior Public Information Officer, Charles Trammell, Development Code Specialist, and Andreea Udrea, Assistant Director

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

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., LaTonia Jackson, Board Secretary, Robyn Gerard, Senior Public Information Officer, Charles Trammell, Development Code Specialist, and Andreea Udrea, Assistant Director

**11:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 18, 2022** docket.

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**1:00 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel A, November 16, 2021 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: January 18, 2022**

**MOTION: Lamb**

Approval of the Board of Adjustment Panel A, November 16, 2021 public hearing minutes.

**SECONDED: Frankford**

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

**NAYS: 0**

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

**MISCELLANEOUS ITEM NO. 2**

Approval of the 2021 Board of Adjustment Annual Report

**BOARD OF ADJUSTMENT ACTION: January 18, 2022**

**MOTION: Halcomb**

Approval of the 2021 Board of Adjustment Annual Report

**SECONDED: Lamb**

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

**NAYS: 0**

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

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**FILE NUMBER: BDA201-121(PD)**

**BUILDING OFFICIAL’S REPORT:** Application of Fernando Dimas for variances to the front yard and side yard setback regulations at 522 S. Oak Cliff Boulevard. This property is more fully described as Lot 8 within City Block 20/3448 and is zoned an R-7.5(A) Single Family District, which requires a front yard setback of 25 feet and requires a side yard setback of five feet. The applicant proposes to construct and maintain a porch extension on an existing single family dwelling unit and provide an 18-foot front yard setback, which will require a seven-foot variance to the front yard setback regulations and provide a two-foot-six-inch side yard setback, which will require a two-foot-six-inch variance to the side yard setback regulations.

**LOCATION: 522 S. Oak Cliff Boulevard**

**APPLICANT: Fernando Dimas**

## **REQUESTS:**

The applicant proposes to construct and maintain a porch extension on an existing single-family dwelling unit and provide an 18-foot front yard setback and a two-foot-six-inch side yard setback.

## **STANDARD FOR A VARIANCE:**

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

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

## **State Law/HB 1475 effective 9-1-21**

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
  - (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
  - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
  - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - (e) the municipality consider the structure to be a nonconforming structure.

## **STAFF RECOMMENDATION (both variances):**

**Approval**, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site is unique and different from most lots in the R-7.5(A) Single Family District considering its restrictive lot area of 7,467 square feet. The applicant submitted a document (**Attachment A**) comparing lot size/area and floor area ratios of four properties within the same zoning district. Per the comparative analysis, the average lot area is 7,474 square feet and the average floor area ratio for structures is 2,585 square feet while the subject site is reported as containing an approximate floor area ratio of 1,148 square feet. Thus, in analyzing the comparative properties the slightly restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

### **BACKGROUND INFORMATION:**

#### **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 property and surrounding uses are developed with a single family uses.

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

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

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

The requests for variances to the front yard and side yard setbacks focus on constructing and maintaining an addition consisting of an extension of the porch in the front yard setback along S. Oak Cliff Boulevard. The applicant proposes an 18-foot front yard setback, which will require a seven-foot variance request. Additionally, the applicant proposes a two-foot-six-inch side yard setback which will require a two-foot-six-inch variance request.

DCAD records indicate that the subject property was developed with a single-family dwelling unit constructed in 1922 and consisting of approximately 1,090 square feet, however the proposed site plan depicts an approximately 1,148 square foot, one-story structure. The applicant proposes to extend the existing porch which will consist of approximately 102 square feet. Additionally, the applicant proposes to provide a two-story addition along the rear portion of the structure that will consist of approximately 1,182 square feet, including an approximately 253-square-foot covered patio along the rear façade of the dwelling, and an approximately 577-square-foot one-story garage. These improvements will provide a maximum floor area of approximately 2,432 square feet for the dwelling unit with an approximately total of 3,009 square feet for all structures (inclusive of garage) on the lot.

The subject site is zoned an R-7.5(A) Single Family District which requires a minimum front yard setback of 25 feet. The property is located along the east line of Oak Cliff Boulevard south of West 12<sup>th</sup> Street. The subject site is flat, rectangular in shape, and according to the application

is approximately .172 acres (or 7,467 square feet) in area. In an R-7.5(A) Single Family District, the regulations require a minimum lot size of 7,500 square feet, a front yard setback of 25 feet, and a side yard setback of five feet.

Compliance with this section of the Code requires the structure to provide the 25-foot front yard setback and the five-foot side yard setback.

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

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

As of December 29, 2021, no letters have been submitted in support of or in opposition to the request.

Ultimately, the two requests are independent, and the board must consider the standards and evidence presented for each request.

If the board were to grant the variance requests to the front yard and side yard setbacks and impose the submitted site plan as a condition, the building footprints of the structures on the site would be limited to what is shown on the plan. However, granting these requests will not provide any further relief to the Dallas Development Code regulations (i.e. development on the site must meet all other code requirements).

**Timeline:**

November 3, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

November 23, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.

December 4, 2021: The Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the December 29, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the

January 7, 2022 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.

Dec. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No review comment sheets were submitted in conjunction with this application.

Dec. 28, 2021: The applicant provided additional evidence with renderings (**Attachment A**).

**BOARD OF ADJUSTMENT ACTION: January 18, 2022**

**APPEARING IN FAVOR:** Fernando Dimas 522 S. Oak Cliff Blvd. Dallas, TX

**APPEARING IN OPPOSITION:** None.

**MOTION#1: Halcomb**

I move that the Board of Adjustment, in Appeal No. BDA 201-121, on application of Fernando Dimas, **grant** the seven-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 submitted site plan is required.

**SECONDED: Narey**

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

**NAYS:** 0 –

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

**MOTION#2: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 201-121, on application of Fernando Dimas, **grant** the two-foot six-inch variance to the side 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 submitted site plan is required.

**SECONDED: Halcomb**

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

**NAYS:** 0 –

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

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**FILE NUMBER:** BDA201-124(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Mark Canty for a variance to the off-street parking regulations at 6407 Anita Street. This property is more fully described as Lot 2, Block B/2968, and is zoned an R-7.5(A) Single Family District, which requires a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a residential accessory structure with a setback of nine-feet-six-inches which will require a variance of ten-feet-six-inches to the off-street parking regulations.

**LOCATION:** 6407 Anita Street

**APPLICANT:** Mark Canty

**REQUEST:**

A request for a variance to the off-street parking regulations of ten-feet-six-inches is made to construct and maintain a residential accessory structure (garage with storage) with a setback of nine-feet-six-inches in lieu of the 20-foot setback requirement.

**STANDARD FOR A VARIANCE:**

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

- (D) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (E) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

(F) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**State Law/HB 1475 effective 9-1-21**

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
  - (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
  - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
  - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - (e) the municipality consider the structure to be a nonconforming structure.

**STAFF RECOMMENDATION:**

**Approval**, subject to the following condition:

- Compliance with the submitted site plan is required and an automatic garage door must be installed and maintained in working order at all times.

Rationale:

Staff concluded that the subject site is unique and different from most lots in the R-7.5(A) Single Family District considering its restrictive lot area of 8,750 square feet. The applicant submitted documents (**Attachment A thru G**) comparing the minimum lot size and total floor area ratio for all structures, of ten properties within the same zoning district. Per the comparative analysis, the average lot area is 13,414 square feet and the average floor area ratio for structures is 3,388 square feet while the subject site is reported as containing an approximate floor area ratio of 2,055 square feet. Thus, the restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

The Transportation Development Services Department Senior Engineer reviewed the information provided for review and has a recommendation of “no objection” to the request. (**Attachment H**).



## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-7.5(A) Single Family District
<u>North:</u>	Planned Development District No. 79
<u>East:</u>	R-7.5(A) Single Family District
<u>South:</u>	R-7.5(A) Single Family District
<u>West:</u>	R-7.5(A) Single Family District

### **Land Use:**

The subject site and surrounding properties to the east, south, and west are developed with single family uses. The property immediately adjacent to the north is developed with retail uses.

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

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

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

This request for a variance to the off-street parking regulations focuses on constructing and maintaining a one-story, two-car garage with a storage area (an enclosed area) that would be located nine-feet-eight-inches from the property line adjacent to the improved alley, into the required 20-foot distance requirement on a property developed with a one-story single-family dwelling unit.

Section 51(A)-4.301(a)(9) of the Dallas Development Code states that 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 an enclosed structure and if the space faces upon or can be entered directly from a street or alley.

According to DCAD records, the “main improvements” consist of an approximately 2,055-square-foot one-story dwelling unit and “additional improvements” consist of an approximately 240-square-foot structure titled “detached quarters” and an approximately 400-square-foot detached garage for the subject property.

The subject site is flat, rectangular in shape and, according to the submitted application, 8,750 square feet in lot area whereas the minimum lot area for an R-7.5(A) Single Family District is 7,500 square feet.

The applicant provided evidence (**Attachment A thru G**) representing a comparative analysis of 10 properties within the same zoning district. The analysis compared the total floor area ratios of the main structures, the total floor area ratios of accessory structures/garages, and the total floor area of all structures combined on these properties. The analysis proved that the site provides a delta of 1,333 square feet total floor area for the main structure and a delta of 1,147 square feet overall for all structures combined on the ten comparative lots.

The Transportation Development Services Department Senior Engineer reviewed the information provided and has a recommendation of “no objection” to the request. (**Attachment H**).

- The applicant has the burden of proof in establishing the following:
- That granting 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 is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

The board may also consider the new criteria for unnecessary hardship and how they relate to the proposed structure and/or existing main structure constraints.

As of December 29, 2021, three letters have been submitted in support of and no letters have been submitted in opposition to the request.

If the board were to grant the request for a variance for an enclosed garage to be located nine-foot-six-inches from the right-of-way line adjacent to a street or alley into the required 20-foot setback, staff recommends imposing the following conditions:

1. Compliance with the submitted site plan is required.
2. An automatic garage door must be installed and maintained in working order at all times.

However, granting the variance request will not provide any further relief to the Dallas Development Code regulations (i.e. development on the site must meet all other code requirements).

## **Timeline:**

- November 10, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- November 23, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- December 14, 2021: The Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the December 29, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the January 7, 2022 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.
- Dec. 27, 2021: The applicant provided additional evidence to staff (**Attachments A-G**).
- Dec. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No review comment sheets were submitted in conjunction with this application.
- Dec. 31, 2021: The Senior Engineer submitted a review comment sheet (**Attachment H**).

## **BOARD OF ADJUSTMENT ACTION: January 18, 2022**

**APPEARING IN FAVOR:** Mark Canty 6407 Anita St. Dallas, TX

**APPEARING IN OPPOSITION:** None.

## **MOTION: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 201-124, on application of Mark Canty, **grant** the ten-foot six-inch 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 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 submitted site plan is required and an automatic garage door must be installed and maintained in working order at all times.

**SECONDED: Narey**

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

**NAYS: 0**

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

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**FILE NUMBER: BDA201-125(JM)**

**BUILDING OFFICIAL'S REPORT:** Application of Patrick Griot for a variance to the front yard setback regulations, and for a special exception to the fence height regulations, and for a special exception to the fence standards regulations, and for a special exception to the visibility obstruction regulations at **9943 Coppedge Lane**. This property is more fully described as Lot 8, Block 1/6220, and is zoned an R-7.5(A) Single Family District, which **(1)** limits the height of a fence in the front yard to four feet; **(2)** requires a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line; **(3)** requires a 20-foot visibility triangle at driveway approaches and alleys; and, **(4)** requires a front yard setback of 25 feet. The applicant proposes to construct an 11-foot-high fence with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line in a required front yard with portions of the fence structure located in required visibility obstruction triangles, which will require a seven-foot special exception to the fence regulation, a second special exception to the fence regulations relating to the solid nature of the fence, and special exceptions to the visibility obstruction regulations. The fence will surround the single-family residential accessory pool structure and provide an 11-foot six-inch front yard setback, which will require a 13-foot six-inch variance to the front yard setback regulations.

**LOCATION: 9943 Coppedge Lane**

**APPLICANT: Patrick Griot**

**REQUEST:**

The applicant is redeveloping the 10,450-square-foot site with a 3,742-square-foot single-family structure that meets the setback requirements. The encroachment into the southern Coppedge Lane second front yard is for a swimming pool. The pool and second front yard area are proposed to be enclosed by an eight-foot-tall solid wood fence. Portions of the fence sit atop a three-foot-high solid retaining wall making the maximum fence and gate height 11 feet. Portions of the solid fence located approximately on the property line are located in three 20-foot visibility triangles at the southwest corner of the property from the alleyway, and from the driveway beside the alleyway, onto Coppedge Lane from the south.

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

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

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

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property. The applicant provided evidence comparing the prospective solid fence on the secondary frontage of the corner lot, to seven other corner lots in the area with solid fences on one of the two street frontages (**Attachment B**).

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

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

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when in the opinion of the board, the special exception will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making.

The Sustainable Development and Construction Senior Engineer reviewed the proposed obstructions for the fence and has no objection to the requests (**Attachment C**).

**STANDARD FOR A VARIANCE:**

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

- (G) 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;
- (H) 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

- (l) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**State Law/HB 1475 effective 9-1-21**

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
- (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
  - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
  - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - (e) the municipality consider the structure to be a nonconforming structure.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots zoned an R-7.5(A) Single Family District in that it is slightly sloped, and, according to the application, contains 10,450 square feet in area. Lots in this district are a minimum of 7,500 square feet in area. However, evidence submitted by the applicant (**Attachments A and B**) identified six lots in the immediate vicinity with an average of 10,680 square feet of lot area.
- The evidence also showed the average house size is about 3,836 square feet. The proposed development is for a commensurate 3,742 square feet.
- Finally, the subject site is encumbered with the unnecessary hardship of two front yards. Between the slight slope and additional front yard setback, the evidence presented notes the site in its current condition has less developable area than other lots in the vicinity with one required front yard. The applicant is seeking relief from the additional front yard setback along the southern frontage of Coppedge Lane and plans to provide a minimum of 30 feet

along the eastern frontage, as required. The southern portion is to be used as a backyard. The variance will allow for the construction of a swimming pool. The main structure is maintaining both front yard setbacks of 30 feet, as established by the build line on the existing plat.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

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

#### **Land Use:**

The subject site is being redeveloped with a single-family structure. All surrounding properties are developed with single-family uses.

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

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

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

This request for a variance to the front yard setback regulations is made to construct and maintain a swimming pool structure. The site is being redeveloped with a single-family structure and is located in an R-7.5(A) Single Family District which requires a minimum front yard setback of 25 feet. However, this property is encumbered with two front yards due to a provision in the Dallas Development Code meant to maintain block continuity when lots face upon a street and provide a front yard setback. This second front yard setback is required to maintain block continuity established by lots to the north and west of the subject site, which all front along the meandering Coppedge Lane. Furthermore, the plat for this property requires a 30-foot build line on both the eastern and southern frontages along Coppedge Lane. The board cannot provide relief to this requirement. Only a replat of the property to remove the build line will resolve the encumbrance.

The applicant is seeking relief from the additional front yard setback along the southern frontage of Coppedge Lane and plans to provide a minimum of 25 feet along the eastern frontage, as required. Additionally, use of the southern portion of the lot for the swimming pool, backyard, and driveway surrounded by a fence and retaining wall solid in nature and located along the property line. The submitted site plan indicates:

- the proposed pool structure would be located as close as 11-feet six-inches from the front property line along the southern Coppedge Lane frontage or as much as 13-feet six-inches into the 25-foot front yard setback.
- An eight-foot solid wood fence is proposed along the northern, western, and southern portions of the lot. Southern portions are proposed atop a three-foot solid retaining wall due to the slope of the site, making the fence and driveway gates up to 11 feet-in-height.
- Portions of the solid fence located approximately on the property line are located in three 20-foot visibility triangles at the southwest corner of the property from the alleyway, and from the driveway beside the alleyway.

In all, the southern portion of the lot would function as a backyard with a tall privacy fence, driveway into the garage, and swimming pool. The main structure is maintaining both front yard setbacks.

Lots in this district are a minimum of 7,500 square feet in area. However, evidence submitted by the applicant (**Attachment A**) identified six lots in the immediate vicinity with an average of 10,680 square feet of lot area. The subject site is unique and different from most lots zoned an R-7.5(A) Single Family District because it is slightly sloped, and, according to the application, contains 10,450 square feet in area—slightly less than the average.

The evidence also showed the average house size is about 3,836 square feet. The proposed development is for a commensurate 3,742 square feet.

Finally, the subject site is encumbered with the unnecessary hardship of two front yards. Between the slight slope and additional front yard setback, the evidence presented notes the site in its current condition has less developable area than other lots in the vicinity with one required front yard. The applicant is seeking relief from the additional front yard setback along the southern frontage of Coppedge Lane and plans to provide a minimum of 25 feet along the eastern frontage, as required.

According to DCAD records, the new house was constructed in 2021 and contains 3,601 square feet of floor area.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.



The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. Additionally, the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five from the front lot line.

Staff conducted a field visit of the site and surrounding area and did not notice other fences within a 400-foot radius of the property that seemed taller than four feet-in-height or solid in nature located in obvious front yards.

The applicant has the burden of proof in establishing that the special exception to the fence height regulation of up to seven feet and having fence panels less than 50 percent open will not adversely affect neighboring properties.

The last request is due to the proposed obstruction of three visibility triangles according to Section 51A-4.602(d) of the Dallas Development Code which states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and alleys on properties zoned single family); and
- between two-and-a-half and eight-feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The Sustainable Development Department Senior Engineer has no objections to the request **(Attachment C)**.

As of January 7, 2022, no letters had been received regarding the request.

If the board were to grant the variance request and impose the submitted site plan as a condition, the proposed swimming pool structure located within the front yard setback along the southern frontage of Coppedge Lane would be limited to what is shown on this document. No additional relief is provided with this request, including relief from the platted build line which will require a replat. The applicant was also made aware of sidewalk requirements for the southern frontage of the property. Additionally, the applicant has the burden of proof in establishing how granting these special exceptions to allow the fence in the front yard will not adversely affect neighboring properties. Finally, the applicant must prove how maintaining portions of a seven-foot-tall solid wood fence atop a three-foot retaining wall for a total height of 11 feet located in two 20-foot visibility triangles at the intersection of the alley and driveway approach into the property from the southern Coppedge Lane frontage, and the 20-foot visibility triangle at the intersection of the alleyway and Coppedge Lane does not constitute a traffic hazard.

**Timeline:**

- Nov. 18, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Nov. 23, 2021: The Board Administrator assigned this case to Board of Adjustment Panel A.
- Dec. 16, 2021: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the December 29, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the January 7, 2022 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.
- Dec. 28-29, 2021: The representative submitted evidence (**Attachment A and B**) to staff.
- Dec. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- Dec. 31, 2021: The Transportation Senior Engineer submitted a review sheet marked “no objection” to the visual obstructions (**Attachment C**).

**BOARD OF ADJUSTMENT ACTION: January 18, 2022**

**APPEARING IN FAVOR:** Patrick Griot 3901 Sailmaker Ln. Plano, TX

**APPEARING IN OPPOSITION:** None

**MOTION#1: Narey**

I move that the Board of Adjustment, in Appeal No. BDA 201-125, on application of Patrick Griot, **deny** the variance to the front yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the

Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

**SECONDED: Frankford**

**AYES:** 2 – Narey, Frankford

**NAYS:** 3 - Lamb, Halcomb, Neumann

**MOTION FAILED:** 2-3

**MOTION#2: Narey**

I move that the Board of Adjustment, in Appeal No. BDA 201-125, **hold** this matter under advisement until **February 22, 2022**.

**SECONDED: Lamb**

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

**NAYS:** 0-

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

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**FILE NUMBER:** BDA201-122(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Benton Mangureira represented by Corey Reinaker for a variances to the building height and a variance to the floor area ratio for an accessory dwelling unit at 7115 Lavendale Avenue. This property is more fully described as Lot 2 within City Block 3/6586 and is zoned an R-16(A) Single Family District, which limits the height of an accessory structure to be constructed no taller than the height of the main structure and limits the cumulative floor area ratio of all accessory structures to be constructed no greater than 25 percent of the floor area of the main structure. The applicant proposes to construct an accessory structure with a maximum height of 18-feet-eight-and-one-half-inches tall, which will require a five-foot-one-inch variance and a floor area of 900-square-feet of floor area (36.6 percent of the 2,457 square-foot floor area of the main structure), which will require a 285 square foot variance.

**LOCATION:** 7115 Lavendale Avenue

**APPLICANT:** Benton Mangureira represented by Corey Reinaker

**REQUESTS:**

The subject site contains an existing one-story single-family structure that consists of approximately 2,457 square foot of floor area with an approximate height of 13-feet-seven-and-one-half-inches. The applicant proposes to construct and maintain a two-story accessory structure that will exceed that height of the main structure and the maximum percentage allowed for an accessory structure.

### **STANDARD FOR A VARIANCE:**

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

- (J) 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;
- (K) 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
- (L) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

### **State Law/HB 1475 effective 9-1-21**

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
  - (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 consider the structure to be a nonconforming structure.

### **Variance to exceed 25 percent of the floor area and height of the main structure:**

Approval.

Rationale:

Staff concluded from the evidence submitted with the application packet that the variances are necessary to permit commensurate development. The subject site size is approximately 16,000 square feet in area which is consistent with the minimum lot area for an R-16(A) Single Family

District. However, the applicant submitted evidence with the application packet comparing the property to 29 other properties in the immediate vicinity. The analysis noted the existing lot area, square-footage of the primary structure, and the square-footage of the additional improvements. The overall average lot area is reported as 17,495 square feet with approximately 3,123 square feet comprising the floor area of the main structure, and five of the comparative properties having one-and-one-half stories and two-story structures on the lots.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-16(A) Single Family District  
North: R-16(A) Single Family District  
South: R-16(A) Single Family District  
East: R-16(A) Single Family District  
West: R-16(A) Single Family District

### **Land Use:**

The subject site and surrounding properties to the east, south, and west are developed with single-family uses while the property to the north is developed with a utility or government installation other than listed use (Oncor Electric).

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

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

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

The subject site is zoned an R-16(A) Single Family District and developed with an approximately 13-foot-seven-and-one-half-inch-tall single-family structure containing approximately 2,457 square feet of floor area. The existing zoning district allows a maximum floor area ratio for accessory structures of 25 percent and prohibits these accessory structures from being taller than the maximum height of the main structure.

The requests will allow for the construction of a two-story structure consisting of a three-car garage structure on the first floor with a second floor consisting of approximately 900 square feet for an accessory structure.

The height of the existing one-story main structure (measured at midpoint) is approximately 13-foot-seven-and-one-half-inches-tall. Commonly, the current height of the existing one-story main structure would prove difficult for many structures developed with two-stories to comply with the maximum height requirements for accessory structures unless the pitch of the roof on the existing main structure is increased or a second story is constructed atop. The maximum height allowed in an R-16(A) District is 30 feet. The applicant proposes to construct a garage/accessory structure with a maximum height of 18-foot-eight-and-one-half-inches, measure at midpoint.

While the subject site does not currently provide an enclosed off-street parking structure, the applicant proposes to construct a three-car, approximately 816-square foot garage structure with rear entry, approximately 29-feet from the improved alley right-of-way line, and

approximately 29-feet-two-inches from the existing main structure. In addition, the second story of the garage structure will contain an accessory structure with approximately 816-square-feet of floor area for a total floor area of 1,632 square feet.

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

- That granting the variances to the floor area regulations and height for structures accessory to single-family uses 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification.
- The variances would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same zoning classification.

The board may also consider the new criteria for unnecessary hardship and how they relate to the proposed structure and/or existing main structure constraints.

As of December 29, 2021, no letters have been submitted in support of or in opposition to the request.

Ultimately, the two requests are independent, and the board must consider the standards and evidence presented for each request.

If the board were to grant the variance to the floor area regulations for structures accessory to single-family uses and the variance to the height for structures accessory to single-family uses and impose the submitted site plan as a condition, the building footprint of the garage/accessory structure on the proposed site plan would be limited to what is shown on this document.

However, granting the variance requests will not provide any further relief to the Dallas Development Code regulations (i.e. development on the site must meet all other code requirements).

**Timeline:**

November 4, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

November 23, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.

December 4, 2021: The Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the December 29, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the January 7, 2022 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.

Dec. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No review comment sheets were submitted in conjunction with this application.

**BOARD OF ADJUSTMENT ACTION: January 18, 2022**

APPEARING IN FAVOR: Corey Reinaker 1814 N PI. Plano, TX

APPEARING IN OPPOSITION: None

**MOTION#1: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 201-122, on application of Benton Manguiera represented by Corey Reinaker, **grant** the 285-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 submitted site plan is required.

**SECONDED: Frankford**

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

NAYS: 0-

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

MOTION#2: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 201-122, on application of Benton Mangureira represented by Corey Reinaker, **grant** the five-foot one-inch variance to the maximum building high 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 submitted site plan and elevation is required.

SECONDED: Halcomb

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

NAYS: 0-

MOTION PASSED: 5-0 (unanimously)

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MOTION: Neumann

I move to adjourn the Panel A hearing

SECONDED: Lamb

AYES: 5 - Lamb, Halcomb, Narey, Frankford, Neumann

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

**2:36 P.M.** Board Meeting adjourned for **January 18, 2022**

  
 \_\_\_\_\_  
 CHAIRPERSON *Signed: 2/22/22*  
  
 \_\_\_\_\_  
 BOARD ADMINISTRATOR  
  
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 BOARD SECRETARY

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