

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
MONDAY, MARCH 21, 2022**

MEMBERS PRESENT AT BRIEFING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Judy Pollock, regular member, Rodney Milliken, regular member, Jared Slade, regular member

MEMBERS ABSENT FROM BRIEFING: None

MEMBERS PRESENT AT HEARING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Judy Pollock, regular member, Rodney Milliken, regular member, Jared Slade, regular member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Attorney, Pamela Daniel, Senior Planner, Robyn Gerard, Senior Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, David Nevarez, Senior Traffic Engineer, and Phil Erwin, Arborist

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Attorney, Pamela Daniel, Senior Planner, Robyn Gerard, Senior Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, David Nevarez, Senior Traffic Engineer, and Phil Erwin, Arborist

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, **March 21, 2022 docket.**

BOARD OF ADJUSTMENT ACTION: March 21, 2022

1:06 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, December 13, 2021 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: March 21, 2022

MOTION: Pollock

Approval of the Board of Adjustment Panel C, December 13, 2021 public hearing minutes.

SECONDED: Slade

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-FW1

BUILDING OFFICIAL’S REPORT: Application of Juan Jose Villanueva, for a special exception to the fence materials regulations at 7120 Cortland Avenue.

LOCATION: 7120 Cortland Avenue

APPLICANT: Juan Jose Villanueva

REQUESTS:

The applicant is requesting a fee waiver for a special exception to the fence height regulations and visibility triangle regulations at the driveway. The fee waiver is requested to accommodate screening of a single family dwelling at 7120 Cortland Avenue.

STANDARD FOR A FEE WAIVER:

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

STAFF RECOMMENDATION:

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

BOARD OF ADJUSTMENT ACTION: March 21, 2022

APPEARING IN FAVOR: Juan Villanueva 7120 Cortland St. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Sashington

I move that the Board of Adjustment, in Appeal No. BDA 212-FW1, on application of Juan Jose Villanueva, **grant** the request to waive the filing fees to be paid in association with a request for a special exception to the fence material regulations as requested by this applicant because our evaluation of the property and testimony shows that the payment of the fee would result in substantial financial hardship to this applicant.

SECONDED: Slade

AYES: 3 –Slade, Agnich, Sashington

NAYS: 2 – Pollock, Milliken

MOTION FAILED: 3– 2

FILE NUMBER: BDA212-008(JM)

BUILDING OFFICIAL’S REPORT: Application of Madison Umberger for a variance to the front yard setback regulations at 9140 Lynbrook Drive. This property is more fully described as Lot 20, Block G/7317, and is zoned an R-7.5(A) Single Family District, which requires a front yard setback of 25 feet. The applicant proposes to construct a single-family residential pool structure and provide a five-foot front yard setback, which will require a 20-foot variance to the front yard setback regulations.

LOCATION: 9140 Lynbrook Drive

APPLICANT: Madison Umberger

REQUESTS: The applicant proposes to build a pool structure in a front yard setback along Lake Haven Drive that was previously granted special exceptions to allow an eight-foot-high solid wood fence in this yard.

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:

- 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.

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 while, according to the application, it contains 11,679 square feet in area, the developable area is reduced down to 6,482 square feet due to the two front yards. Lots in this district are a minimum of 7,500 square feet in area. However, evidence submitted by the applicant (**Attachment A**) identified eight lots in the immediate

vicinity with an average of 11,618 square feet of lot area, the largest being over 13,000 square feet and smallest around 9,200 square feet.

- The evidence also showed the average house size is about 2,201 square feet. This area is transitioning, and new builds are larger than the existing housing stock. The subject main structure is the largest in the comparable list with 4,154 square feet. However, the existing structure maintains the required front yard setbacks.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA190-027: On June 22, 2020, Panel C granted requests for special exceptions to (1) the fence height regulations and (2) the fence standards regulations to construct an eight-foot-high fence in a required front yard at 9140 Lynbrook Drive. (the subject site)
2. BDA189-091: On September 16, 2019, Panel C granted requests for: 1) a variance to the front yard setback of up to 20 feet; and, 2) special exceptions to the fence regulations for an eight-foot-high solid wood fence with fence panels with a surface area less than 50 percent open less than five feet from the Lorwood Drive front lot line at 9216 Lynbrook Drive. (north of the subject site)

GENERAL FACTS/STAFF ANALYSIS

The subject site is zoned an R-7.5(A) Single Family District, which requires a 25-foot front yard. Corner lots in single family districts with frontage on two streets where one frontage is shorter than the other allow the longer frontage to be governed by the side yard regulations. However, if another structure has an established setback along the block face of the longer frontage, that side must maintain a front yard free from structures for block continuity. Furthermore, if a building line is established by plat or ordinance, the building line rules. In this case, the district requires two 25-foot front yards, but the plat dictates two 30-foot front yard setbacks for the subject site.

The purpose of this request is to construct a pool structure in the front yard setback on Lake Haven Drive. This portion of the lot functions as a backyard with a tall privacy fence previously approved by the board, and now the proposed 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 eight lots in the immediate vicinity with an average of 11,679 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 while it contains 11,679 square feet in area, it is encumbered with the hardship of two front yards. 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 Lake Haven Drive.

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.

As of February 11, 2022, the applicant had submitted a petition of support with signatures from 20 neighbors. No other letters have been submitted regarding this 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 would be limited to what is shown on this document. No additional relief is provided with this request.

TIMELINE:

December 9, 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.

January 6, 2022: The Board of Adjustment Chief Planner randomly assigned this case to Board of Adjustment Panel C.

- January 10, 2022: The Board of Adjustment Chief 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 deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 27, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearing. The review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, 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.
- February 9, 2022: The applicant submitted additional evidence for consideration **(Attachment A)**.
- February 24, 2022: The Board hearing was cancelled due to inclement weather and rescheduled to March 21, 2022

BOARD OF ADJUSTMENT ACTION: March 21, 2022

APPEARING IN FAVOR: Madison Umberger 9140 Lynbrook Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 212-008, on application of Madison Umberger, **grant** the variance to the front yard setback regulations requested by this applicant because our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code, as applicable to wit.

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: Agnich

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

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

FILE NUMBER: BDA212-012(PD)

BUILDING OFFICIAL’S REPORT: Application of Elizabeth Alvarez Villaizan for a 12-foot-six-inch side yard variance, which will require a seven-foot-six-inch variance and a variance to construct and maintain a general merchandise or food store 3,500 square feet or less use, and a motor vehicle fueling station use and provide eight of the required 12 off-street parking spaces, which will require a four-space variance (33 percent reduction) to the off-street parking regulations at 3900 N. Hampton Road. This property is more fully described as Lots 18 and 19 in City Block 11/7130 and is zoned a CR Community Retail District which requires compliance with off-street parking regulations per the use.

LOCATION: 3900 N. Hampton Road

APPLICANT: Elizabeth Alvarez Villaizan

REQUEST:

A request for variances to the side yard setback and the off-street parking regulations is made to maintain a general merchandise or food store 3,500 square feet or less use, and a motor vehicle fueling station use [Shell Station] and provide eight of the required 12 off-street parking spaces. An addition was made to the general merchandise or food store 3,500 square feet or

less use to provide for expansion of the service, but no additional off-street parking spaces were added.

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:

- 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.

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 (side yard variance):

Denial.

Rationale:

Staff has concluded that submitted evidence (**Attachment A**) does not substantiate the following:

- how granting or not granting the variances are 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;
- how granting or not granting the variances are 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
- whether the variances sought are due to self-created or personal hardship, not intended for financial reasons, granted to relieve 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 approved site plan depicts the structure in compliance with the required 20-foot side yard setback from the residential district to the east. As a result, staff concludes that the requested side yard variance, are self-created hardships or personal hardships due to the construction of the addition not being compliant with the approved site plan and permits. Lastly, the applicant provided a comparative analysis of five properties. The analysis did not meet the variance standard of how the subject property is restrictive in area, shape, or slope where it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning. Instead, the analysis focused on the comparative sites not having the required side yard setback, as well.

STAFF RECOMMENDATION (off-street parking variance):

Approval.

Rationale:

Internal records show that permits were approved on April 19, 2018. The approved plans reflected an addition of 279 square feet and the provision of seven off-street parking spaces to meet the off-street parking requirement of one space per every 200 square feet of floor area ($279+810=1089/200=5.4$ or 5 required spaces plus two additional spaces for the fueling station). A subsequent inspection found a greater addition was constructed with 1,132 square feet of floor area in lieu of the approved one of 279 square feet. The greater floor area of the structure then triggered a much greater requirement in the off-street parking requirement of 12 spaces rather than the seven-existing on-site in 2018. As a result, staff concludes that the requested variance to provide eight of the required 12 off-street parking spaces, which will require a four-space variance (33 percent reduction) to the off-street parking regulations.

To assist the board in its decision-making, the Senior Engineer within the Transportation Development Services Division Department of Transportation reviewed the area of request and information provided by the applicant. A comment sheet (**Attachment B**)

submitted in review of the request reflects a recommendation of “no objection” with a comment that the site plan must meet City standards as outlined below.

- No driveways allowed closer than 55 feet from intersection
- Number of driveway approaches must be minimized
- Must restore curb for all abandoned driveway approaches
- Sidewalk and barrier free ramp requirements apply
- Driveway width and design standards apply

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CR Community Retail District
<u>North:</u>	CR-D Community Retail District w/a D Liquor Control Overlay
<u>East:</u>	R-5(A) Single Family District
<u>South:</u>	CR Community Retail District
<u>West:</u>	Tract 7 within PDD No. 508

Land Use:

The subject site is developed with a general merchandise or food store 3,500 square feet or less use, and a motor vehicle fueling station use [Shell Station]. The property to the north is developed with an office use; immediately adjacent to the east is undeveloped; to the south across Leath Street is developed with an auto-related use; and, to the west across N. Hampton Road is developed with a utility or government installation other than listed [Dallas Housing Authority].

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

A request for a variance to construct and maintain a general merchandise or food store 3,500 square feet or less use and a motor vehicle fueling station use and a variance to the off-street parking regulations of four spaces is made to maintain a general merchandise or food store 3,500 square feet or less use and a motor vehicle fueling station use [Shell Station] and provide eight of the required 12 off-street parking spaces. An addition was made to the general merchandise use to provide for expansion of the use; however, no increase to the off-street parking was provided.

The site is zoned a CR Community Retail District, which requires the off-street parking requirements to be provided per Chapter 51A. Accordingly, per SEC 51A-4.210(b)(24), a general merchandise or food store 3,500 square feet or less use off-street parking requirement is one space per 200 square feet of floor area while a motor vehicle fueling station use off-street parking requirement is two spaces. Per the requirement, the proposed 1,932-square-foot general merchandise or food store 3,500 square feet or less use requires 9.66 off-street parking

spaces. Since a fraction of a space is unobtainable, the .66 is rounded to the nearest whole number. Thereby, 10 off-street parking spaces are required. Thus, the 10 off-street spaces required in addition to the two off-street spaces for the motor vehicle fueling station use, requires a total of 12 off-street parking spaces for the site.

Additionally, Chapter 51A Sec. 51A-4.122(4)(B)(i) regulates the following **side yard** and rear yard setbacks:

(B) Side and rear yard. Minimum side and rear yard is:

- (i) 20 feet where adjacent to or directly across an alley from R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district; and
- (ii) no minimum in all other cases

According to the proposed site plan provided in review of the request, the general merchandise or food store 3,500 square feet or less use and the motor vehicle fueling station use operated legally under a Certificate of Occupancy granted August 24, 1984 and contained 810 square feet of floor area with seven off-street parking spaces provided. On April 19, 2018, building plans were submitted depicting the existing floor area of 810 square feet and the proposed 279-square-foot addition. Additionally, the existing structure provided the required 20-foot side yard setback along the rear of the structure which is adjacent to the undeveloped single-family district. However, construction of the site failed to ensure compliance of neither the setback of 20-feet for the existing structure nor the addition constructed adjacent to the single-family district with a larger footprint or floor area, as well. The proposed site plan depicts the addition aligned with the wall of the existing structure which compels staff to question whether the exterior wall of the structure was enlarged to further encroach into the single-family district, since the proposed addition was developed along the northern portion of the site in line with the existing 810-square-foot retail structure. One day later, on April 19, 2018, permits were subsequently cancelled along with trade permits (plumbing) and a new application for permits submitted on June 10, 2021, depicting the larger addition and the side yard encroachment.

The Senior Engineer within the Transportation Development Services Division Department of Transportation recommends “no objection” of the request (**Attachment B**).

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

- The parking demand generated by the general merchandise or food store 3,500 square feet or less use and the motor vehicle fueling station use does not warrant the number of off-street parking spaces required; and,
- The variance of four spaces (or a 33 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- That granting the variance to the side yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter

would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR 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 CR zoning classification.

Additionally, the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
- Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
- Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- The municipality consider the structure to be a nonconforming structure.

As of March 11, 2022, no letters have been submitted in support of nor in opposition of the request.

If the board grants the side yard setback variance and the variance to the off-street parking requests and imposes the submitted site plan as a condition, development would be limited to what is shown on this document. Granting these variances will not provide any relief to the Dallas Development Code regulations.

Timeline:

Dec. 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.

Dec. 28, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 3, 2022: The Board of Adjustment 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 January 26th deadline to submit additional evidence for staff to factor into their analysis; and the February 11th 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."

January 27, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board.

February 7, 2022: The representative submitted evidence (**Attachment A**) for staff consideration.

February 16, 2022: The representative submitted an email requesting a postponement to the Panel C Board of Adjustment hearing in March.

March 14, 2022: The Senior Engineer within the Transportation Development Services Division of the Department of Transportation recommends "no objection" the request (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: March 21, 2022

APPEARING IN FAVOR: Elizabeth Alvarez 3900 Hampton Rd. Dallas, TX
Anand Gupta 3900 Hampton Rd. Dallas, TX
Roberto Nunez 3900 Hampton Rd. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 212-012, **hold** this matter under advisement until **May 16, 2022**.

SECONDED: Pollock

AYES: 4 – Milliken, Slade, Pollock, Agnich, Sashington

NAYS: 1 - Agnich

MOTION PASSED: 4–1

FILE NUMBER: BOA201-092(PD)

BUILDING OFFICIAL'S REPORT: Application of Danielle Mathews of Masterplan Texas for a special exception to the fence height regulations at 10645 Lennox Lane. This property is more fully described as Lot 2, Block C/5534, and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct and maintain a nine-foot-high fence in a required front yard, which will require a five-foot special exception to the fence regulations.

LOCATION: 10645 Lennox Lane

APPLICANT: Danielle Mathews of Masterplan Texas

REQUEST:

The request for a special exception to the fence standards regulations is made to construct and maintain a nine-foot-high fence. The property is currently undergoing development, fenced, and moderately wooded.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is currently undeveloped and moderately wooded. Surrounding properties to the north, east, south, and west are developed with single-family uses.

Zoning/BDA History: There have been ten related board cases in the vicinity within the last five years.

1. **BDA212-014:** On March 23, 2022, the Panel B, Board of Adjustments will hear a request for a special exception to the fence height regulations at 10625 Lennox Lane.
2. **BDA167-047:** On April 17, 2017, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 10545 Lennox Lane.
3. **BDA167-140:** On December 11, 2017, the Panel C, Board of Adjustments granted a special exception to the fence standards at 10564 Lennox Lane.
4. **BDA178-038:** On May 21, 2018, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 10515 Lennox Lane.
5. **BDA178-111:** On October 18, 2018, the Panel B, Board of Adjustments granted a special exception to the fence height regulations at 10650 Strait Lane.
6. **BDA178-127:** On November 14, 2018, the Panel B, Board of Adjustments granted a special exception to the fence height regulations at 10747 Lennox Lane.
7. **BDA189-099:** On October 21, 2019, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 4554 Harrys Lane.
8. **BDA189-141:** On December 16, 2019, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 4610 Catina Lane.
9. **BDA190-079:** On October 19, 2020, the Panel C, Board of Adjustments granted a special exception to the fence height regulations, and for a special exception to the visibility obstruction regulations at 4651 Cantina Lane.
10. **BDA190-050:** On June 22, 2021, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 4610

Cantina Lane.

GENERAL FACTS/STAFF ANALYSIS:

The applicant requests a special exception to the fence height standards of five feet to construct and maintain portions of a fence with staggering heights ranging from nine feet to five feet. The request proposes five-foot-tall steel picket fencing along the southern portion of the site with a nine-foot-tall stone veneer wall at the clip or intersection between the unimproved alley along the southern portion of the property and Lennox Lane. The portion of the nine-foot-tall veneer wall at the clip is proposed to encroach 19-feet into the required 40-foot front yard setback. As the fence continues counterclockwise from the unimproved alley to Lennox Lane, five-foot-tall steel picket fencing with connectivity to one seven-foot-tall limestone veneer wingwall, a seven-foot-tall steel picket automatic vehicular gate and a second seven-foot-tall limestone veneer wingwall is proposed along the southeastern portion of the site.

As the proposed fence continues north along the northeastern portion of the site towards Catina Lane, the proposed five-foot-tall steel picket fencing continues and connects to another nine-foot-tall limestone veneer wall that encroaches wholly into the required 40-foot front yard setback. The nine-foot-tall limestone veneer wall extends through the property from the northern portion of the site through the property to the southern portion of the site with an approximate length of 244-feet six-inches and an approximate width of 2-feet. Only 40-feet of the nine-foot-tall limestone veneer wall encroaches into the 40-foot front yard setback along Catina Lane or the northern portion of the site. The remainder of the proposed nine-foot-tall limestone veneer wall's approximately 185-foot six-inch limestone veneer wall is inset 62-feet six-inches from the property line along Lennox Lane which is outside of the 40-foot front yard setback. Six-foot wrought iron fencing is proposed to span the length of the property along Catina Lane with one eight-foot-tall stone veneer wall connecting the fence to the northeast terminus of the site.

All portions of the proposed fence staggered in height along Lennox Lane and Catina Lane encroach into both 40-foot front yard setbacks. Additionally, to soften the effects of the fence, the applicant has proposed to heavily landscape both the northern and southern portions of the site with tree and plant species such as Southern Magnolia, Needlepoint Holly Hedge, and low shrub plantings.

Currently, the property is undergoing development with internal records reflecting a building permit issued in 2018 for a single-family dwelling unit with approximately 9,379 square feet of floor area.

Section 51A-4.602(A)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The subject site is zoned an R-1ac Single Family District and requires a minimum front yard setback of 40 feet. However, the property is situated along the northwest line of Catina Lane and Lennox Lane and thereby must maintain the 40-foot front yard setback in compliance with the front yard provisions for residential districts on both frontages.

Staff conducted a site visit of the subject site and the surrounding area and observed fences along Catina Lane, and Lennox Lane located in the front yard setbacks which appeared to be above four feet-in-height and located in the front yard setback, many of which have recorded BDA history (see the Zoning/BDA History section of this case report for details).

Additionally, the representative provided evidence (**Attachment A**) to staff which contains eight board cases related to height within the vicinity of the subject property that have been granted special exceptions to the fence height regulations and fence standard regulations.

As of March 11, 2022, three emails have been submitted in opposition of the request and one letter has been submitted in support of the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of nine feet located on Lennox Lane will not adversely affect neighboring properties.

Granting the special exception to the fence height regulations would require the proposal exceeding four feet-in-height in the front yard setback located along Catina Lane and Lennox Lane to be maintained in the locations, heights and materials as shown on the site plan and elevation plan.

Timeline:

August 9, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

Sept. 16, 2021: The Board of Adjustment Administrator randomly assigned this case to Board of Adjustment Panel C.

Sept. 17, 2021 &

January 3, 2022: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the September 28, 2021 deadline and subsequent January 26, 2022 deadline to submit additional evidence for staff to factor into their analysis; and the October 8, 2021 and February 11, 2022 deadlines 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.

Sept. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 staff review comment sheets were submitted with this request.

October 18, 2021: The Board held the request under advisement until the November 15, 2021, Panel C hearing. To date, no updates have been provided.

Nov. 15, 2021: The Board held the request under advisement until the February 24, 2022, Panel C hearing. Site plan and elevation plan revisions compliant with the prohibited materials and openness of the fence were provided.

February 11, 2022: The representative submitted evidence (**Attachment A**) for staff consideration.

February 24, 2022: The Board hearing was cancelled due to inclement weather and rescheduled to March 21, 2022.

BOARD OF ADJUSTMENT ACTION: October 18, 2021

APPEARING IN FAVOR: Danielle Mathews 2201 Main St, #1280 Dallas, TX
Dallas Cothrum 2201 Main St. #1280 Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Agnich

I move that the Board of Adjustment in Appeal No. BDA 201-092 hold this matter under advisement until November 15, 2021.

SECONDED: Ramsour

AYES: 4 - Brooks, Ramsour, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 4 – 0

BOARD OF ADJUSTMENT ACTION: November 15, 2021

APPEARING IN FAVOR: Danielle Mathews 2201 Main St, #1280 Dallas, TX
Dallas Cothrum 2201 Main St. #1280 Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Agnich

I move that the Board of Adjustment in Appeal No. BDA 201-092 hold this matter under advisement until February 24, 2022.

SECONDED: Sashington

AYES: 5 – Brooks, Slade, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

BOARD OF ADJUSTMENT ACTION: March 21, 2022

APPEARING IN FAVOR: Danielle Mathews 2201 Main St, #1280 Dallas, TX
Dallas Cothrum 2201 Main St. #1280 Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 201-092, on application of Danielle Mathews of Masterplan Texas, **grant** the request of this applicant to construct and/or maintain a nine-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Slade

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

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

MOTION: Slade

I move to adjourn the Panel C hearing.

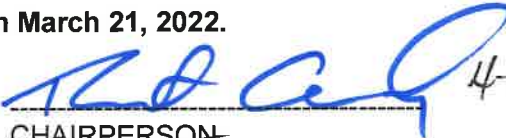
SECONDED: Agnich

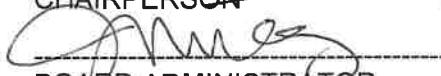
AYES: 5 – Milliken, Slade, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 - 0

The meeting was adjourned at 1:46 P.M. on March 21, 2022.

 4-18-22

CHAIRPERSON


BOARD ADMINISTRATOR


BOARD SECRETARY

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