

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, APRIL 20, 2022**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Michael Karnowski, regular member, Herlinda Resendiz, regular member

MEMBERS ABSENT FROM BRIEFING: Joseph Cannon, regular member

MEMBERS PRESENT AT HEARING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Michael Karnowski, regular member, Herlinda Resendiz, regular member

MEMBERS ABSENT FROM HEARING: Joseph Cannon, regular member

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

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

11:06 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's April 20, 2022 docket.

BOARD OF ADJUSTMENT ACTION: April 20, 2022

1:02 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 amended Board of Adjustment Panel B, January 19, 2022 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: April 20, 2022

MOTION: Gambow

Approval of the amended Board of Adjustment Panel B, January 19, 2022 public hearing minutes.

SECONDED: Shouse

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA212-022(PD)

BUILDING OFFICIAL’S REPORT: Application of Mark Daniels for special exceptions to the fence height and fence standards regulations at 10007 Hollow Way Road. This property is more fully described as Lot 6 in City Block 2/5517 and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line. The applicant proposes to construct a nine-foot-tall fence with fence panels that do not meet the minimum opacity requirement in a required front yard, which will require a five-foot-six-inch special exception to the fence regulations and a special exception to the fence standards regulations.

LOCATION: 10007 Hollow Way Road

APPLICANT: Mark Daniels

REQUEST:

The applicant proposes a fence of nine feet in height, constructed of stucco walls, smooth stone columns, and two twelve wide iron located along Hollow Way Road at a length of 218 feet. The site is currently gated and undeveloped.

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

Land Use:

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

Zoning/BDA History:

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

1. BDA212-033: On April 20, 2022, Panel B, Board of Adjustment will hear a request for a variance to the front yard setback along two front yards (Walnut Hill and Meadowbrook Drive) at 10001 Meadowbrook Drive.
2. BDA201-089: On October 20, 2021, Panel B, Board of Adjustment granted a request for a special exception to the fence regulations, a special exception to the fence standards regulations, and two special exceptions to the visual obstruction regulations at 9646 Douglas Avenue.
3. BDA189-058: On May 20, 2019, the Panel C, Board of Adjustment granted a request for a special exception to the minimum front yard setback requirements to preserve an existing tree at 10040 Hollow Way Road.
4. BDA178-139: On January 16, 2019, the Panel B, Board of Adjustment granted a request for a variance to the front yard setback and a variance to the side yard setback at 10221 Hollow Way Road.

GENERAL FACTS/STAFF ANALYSIS:

Two requests exist for the subject site. The first request for a special exception to the fence height regulations of five feet-six-inch is made to construct and maintain a nine-foot-six-inch-tall fence which will require a five-foot-six-inch special exception.

The second request for a special exception is made to the fence standards regulations to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line.

The property is currently undeveloped. The applicant proposes a fence with a maximum height of nine-feet-six-inches, constructed of stucco walls, smooth stone columns, and two twelve wide iron located along Hollow Way Road at a length of 218 feet.

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(A) Single Family District and requires a minimum front yard setback of 40 feet.

The following information is shown on the submitted site plan:

- The proposed fence with access gates along Hollow Way Road is proposed on the front lot line with a depth of 28-and one-half feet.
- The portion of the fence where the iron gate is proposed is located or setback three feet from the front lot line.

Add statement about site visit and whether other fences were noted.

As of April 13, 2022, two letters have been submitted in support of the request and no letters have been submitted in opposition to the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of eight feet located on Ridgemont Drive and Fisher Road will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to the height and opacity would require the proposal exceeding four feet-in-height in the front yard setback located along Hollow Way Road and Walnut Hill Lane to be maintained in the locations, heights, and opacity/openness as shown on the site plan and elevation plan.

Timeline:

January 13, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 8, 2022: The Board Senior Planner emailed the representative 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 March 30th deadline to submit additional

evidence for staff to factor into their analysis; and the April 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;

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

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

April 13, 2022: The applicant provided evidence for Board consideration.

BOARD OF ADJUSTMENT ACTION: April 20, 2022

APPEARING IN FAVOR: Mark Daniels 7404 Glenshannon Cir. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION#1: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 212-022, on application of Mark Daniels, **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: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

MOTION#2: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 212-022, on application of Mark Daniels, **grant** the request of this applicant to construct and/or maintain fence panels with a surface area less than 50 percent open located less than five feet from the front lot lines as a

special exception to the surface area openness requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA212-023(PD)

BUILDING OFFICIAL’S REPORT: Application of Alexa Peer Sheinbein for a variance to the front yard setback regulations at 5253 Bonita Avenue. This property is more fully described as part of lot 15 in City Block 7/1973 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 and maintain a single-family residential structure and provide a five-foot front yard setback, which will require a 20-foot variance to the front yard setback regulations.

LOCATION: 5253 Bonita Avenue

APPLICANT: Alexa Peer Sheinbein

REQUESTS:

A request for a variance to the front yard setback regulations of twenty feet is made to construct and maintain a single-family dwelling within the subject site’s 25-foot front yard setback on Laneri Avenue. The property is currently undeveloped and situated along a corner lot with two front yards.

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:

Denial.

Rationale:

Staff has not received evidence. Therefore, staff cannot establish whether the subject site is restrictive in area, shape, or slope, and thus cannot be developed in a manner commensurate with other properties within the same zoning district.

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 undeveloped while the surrounding properties to the north, east, and south are developed with single-family dwellings.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on constructing and maintaining a single-family dwelling unit that is situated along a front yard (Laneri Avenue). The lot is situated at the intersection of Bonita Avenue and Laneri Avenue, which provides two front yards, one along each corridor. Since the subject site is zoned an R-7.5 Single Family District, a 25-foot front yard setback must be maintained along both frontages to ensure continuity of the block.

In a single-family district, a corner lot 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. In this case, Laneri Avenue provides the longer frontage and would be treated as a side yard. However, if another structure has an established setback along the block face of the longer frontage, that side must maintain an unobstructed front yard to comply with block continuity.

A site plan has been submitted denoting the proposed single-family dwelling located five feet from the front property line along Laneri Avenue and containing approximately 5,153 square feet of floor area. The portion of the single-family structure fronting along Bonita Avenue is not proposed to encroach into the front yard setback and will provide a front yard setback of the required 25 feet. While the portion of the structure along Laneri Avenue will encroach into the required 25-foot front yard setback and proposes to provide a front yard setback of five feet.

The subject site is not irregular in shape but is irregular in area with approximately 5,136 square feet in lot area. An R-7.5(A) zoning district requires lots to have a minimum lot size of 7,500 square feet. However, the applicant has not provided evidence that reflects the decrease in buildable lot area due to the double frontage.

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.

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 April 13, 2022, no letters have been submitted in support of or in opposition of the request.

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

Timeline:

January 14, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 8, 2022: The Board Senior Planner emailed the representative 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 March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the

Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT ACTION: April 20, 2022

APPEARING IN FAVOR: Alexa Sheinbein 7006 Shipp Rd. Dallas, TX

APPEARING IN OPPOSITION: Kelly Smoyer 5251 Bonita Ave. Dallas, TX
Jeff York 2412 Laneri Ave. Dallas, TX

MOTION: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 212-023, **hold** this matter under advisement until **June 22, 2022**.

SECONDED: Gambow

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA212-030(PD)

BUILDING OFFICIAL’S REPORT: Application of Grayson Wafford for a variance to the front yard setback regulations at 7202 La Vista Drive. This property is more fully described as Lot 19 in City Block C/2729 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 and maintain a single-family residential structure and provide a four-foot front yard setback, which will require a 21-foot variance to the front yard setback regulations.

LOCATION: 7202 La Vista Drive

APPLICANT: Grayson Wafford

REQUESTS:

A request for a variance to the front yard setback regulations of twenty-one feet is made to construct and maintain a single-family dwelling within the subject site’s 25-foot front yard setback on Corona Street. The property is currently undeveloped and situated along a corner lot with two front yards.

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:
 - (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.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site being situated on a corner lot encumbered by two front yards determines this property has an unnecessary hardship and is unable to be developed in a manner commensurate with the development upon 13 other parcels of land with the same R-7.5(A) zoning classification, per evidence (**Attachment A**) submitted by the applicant. Additionally, due to the building envelope or developable area being restricted by two front yards, the site is significantly encumbered with a developable area of 2,714 square feet for the structure while the 13 comparable sites provide a developable envelope or area of 4,905 square feet for lot coverage.

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 site is undeveloped while the surrounding properties to the north, east, and south are developed with single-family dwellings.

Zoning/BDA History:

There have been four related board or zoning cases in the vicinity within the last five years.

1. **BDA201-057:** On August 16, 2021, the Panel B Board of Adjustment denied a request for a variance to the parking regulations of 13 spaces is made to maintain a mix of uses within a multitenant facility at 7330 Gaston Avenue.
2. **BDA190-058:** On May 20, 2020, the Panel B Board of Adjustment granted a variance to the front yard setback regulations of 20 feet is made to construct and maintain a two-story single-family structure at 7318 La Vista Drive.
3. **BDA189-090:** On August 21, 2019, the Panel B Board of Adjustment granted a request for a variance to the side yard setback regulations of 5" is made to maintain an existing two-story single family home structure at 7132 Casa Loma Avenue.
4. **BDA178-011:** On January 17, 2018, the Panel B Board of Adjustment granted a special exception to the fence standards regulations to construct and maintain a 9-foot-high fence in a required front yard, which will require a 5-foot special exception to the fence standards, and to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line at 7303 Casa Loma Avenue.

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on constructing and maintaining a single-family dwelling unit that is situated along a front yard (Corona Street). The lot is situated at the intersection of La Vista Drive and Corona Street, which provides two front yards, one along each corridor. Since the subject site is zoned an R-7.5 Single Family District, a 25-foot front yard setback must be maintained along both frontages to ensure continuity of the block.

In a single-family district, a corner lot 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. In this case, Corona Street provides the longer frontage and would be treated as a side yard. However,

if another structure has an established setback along the block face of the longer frontage, that side must maintain an unobstructed front yard to comply with block continuity.

A site plan has been submitted denoting the proposed single-family dwelling located four feet from the front property line along Corona Street and containing approximately 3,523 square feet of floor area. The portion of the single-family structure fronting along La Vista Drive is not proposed to encroach into the front yard setback and will provide the front yard setback of 25 feet while the portion of the structure proposed along Corona Street proposes to encroach 20 feet into the required front yard setback.

The subject site is not irregular in shape and is approximately 8,250 square feet in lot area. An R-7.5(A) zoning district requires lots to have a minimum lot size of 7,500 square feet. However, the applicant has provided evidence (**Attachment A**) that reflects the decrease in buildable lot area of 30 percent due to the double frontage. The evidence provides an analysis of 13 comparative lots with an average lot area of approximately 7,632 square feet with a buildable area of 4,905 square feet while the existing lot area for the subject site is approximately 7,844 with a buildable area of 3,000 square feet which is a delta of 1,905 square feet.

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.

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 April 13, 2022, no letters have been submitted in support of or in opposition of the request.

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

Timeline:

February 10, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents/evidence (**Attachment A**) that have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 8, 2022: The Board Senior Planner emailed the representative 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 March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

March 29, 2022: The applicant provided revised evidence for Board consideration (**Attachment A**).

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT ACTION: April 20, 2022

APPEARING IN FAVOR: Grayson Wafford 6516 Sondra Dr. Dallas, TX

APPEARING IN OPPOSITION: Brad McCormick 7210 LaVista Dr. Dallas, TX

MOTION: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 212-030, on application of Grayson Wafford, **grant** the 21-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 **revised** site plan is required.

SECONDED: Shouse

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA212-033(JM)

BUILDING OFFICIAL’S REPORT: Application of Mehrdad Ghani for a variance to the front yard setback regulations at 10001 Meadowbrook Drive. This property is more fully described as Tract 8, Block 5517, and is zoned an R-1ac(A) Single Family District, which requires a front yard setback of 40 feet.

LOCATION: 10001 Meadowbrook Drive

APPLICANT: Mehrdad Ghani

REQUESTS: The applicant proposes to construct a single-family residential structure and provide a 17-foot six-inch front yard setback along Walnut Hill Lane, which will require a 22-foot six-inch variance to the front yard setback regulations, and to construct a single-family residential structure and provide a 31-foot front yard setback along Meadowbrook Drive, which will require a nine-foot variance to the front yard setback regulations.

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
- (I) 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:

Denial.

Rationale:

- While the site is unique due to being encumbered by a second front yard setback requirement, having a flood plain, and topographical challenges on over 50 percent of the site, the applicant failed to provide evidence showing how the proposed development is commensurate with the development upon other parcels with the same zoning.

- If a list were to be provided, staff would support this request with the recommendation being subject to the submitted site plan.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

While there is a nearby case BDA212-022 east of the site and on this month's agenda for Panel C, it pertains to a fence and not front yard setback variance. There has been no relevant board or zoning case history in the vicinity within the last five years.

Additionally, the subject site was granted variances to the front yard setback by Panel A on May 19, 2015 (BDA145-056), surpassing the five-year rule for returning to the same panel (Sec.51A-3.102(b) Case assignments). The board shall adopt rules for the assignment of cases to a panel. Only one panel may hear, handle, or render a decision in a particular case. If a case is dismissed or withdrawn and subsequently refiled within five years of the date the original case was dismissed or withdrawn, it must be returned to the panel to which it was originally assigned.

GENERAL FACTS/STAFF ANALYSIS

The subject site is zoned an R-1ac(A) Single Family District, which requires a 40-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. In this case, the district requires two 40-foot front yards, due to the orientation of properties to the west along Walnut Hill Road.

The applicant proposes to construct a single-family residential structure and provide a 17-foot six-inch front yard setback along Walnut Hill Lane, which will require a 22-foot six-inch variance to the front yard setback regulations, and to construct a single-family residential structure and provide a 31-foot front yard setback along Meadowbrook Drive, which will require a nine-foot variance to the front yard setback regulations.

Lots in this district are a minimum of one acre or 43,560 square feet in area. According to DCAD records, the subject site contains just under an acre or 39,509 square feet of area. Additionally, the lot is encumbered with a second front yard. Finally, the site has a creek and flood plain running through it, making more than 50 percent of the lot slopped and impossible to develop.

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-1ac(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-1ac(A) zoning classification.

As of April 13, 2022, no letters had 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 structure located within the front yard setbacks for each front yard would be limited to what is shown on this document. No additional relief is provided with this request.

TIMELINE:

- February 11, 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.
- March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 15, 2022: 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 March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th

deadline to submit additional evidence to be incorporated into the Board's docket materials;

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

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board

April 13, 2022: No evidence, staff review comments, or letters had been received.

BOARD OF ADJUSTMENT ACTION: April 20, 2022

APPEARING IN FAVOR: Mike Ghani 10001 Meadowbrook Dr. Dallas, TX
Rona Ghani 10001 Meadowbrook Dr. Dallas, TX

APPEARING IN OPPOSITION: Nancy Sanders 10025 Meadowbrook Dr. Dallas, TX

MOTION: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 212-033, **hold** this matter under advisement until **May 18, 2022**.

SECONDED: Shouse

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA212-036(JM)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin for a variance to the front yard setback regulations at 1000 Fort Worth Avenue. This property is more fully described as Lot 3A, Block 19/3980, and is zoned Subarea 2B within Planned Development District No. 716, which requires a front yard setback of 60 feet.

LOCATION: 1000 Fort Worth Avenue

APPLICANT: Rob Baldwin, Baldwin and Associates

REQUESTS: The applicant proposes to construct a multi-family structure and provide a 142-foot front yard setback, which will require an 82-foot variance to the front setback regulations.

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.

STAFF RECOMMENDATION:

Denial.

Rationale:

- Staff concluded that the subject site is unique since the property is sloped, irregular in shape, and burdened by a front yard min/max setback that lacks a provision for driveways/pedestrian access via allowing a percentage or average. However, staff could not

determine whether it is different from other parcels with the same zoning of Subdistrict 2 within Planned Development District No. 714.

- Evidence submitted by the applicant (**Attachment A**) identified not only the irregular shape and slope of the site, but additionally an abandoned right-of-way that still maintains functioning utility easements which would be cost prohibitive to relocate, creating an unnecessary hardship.
- Additionally, the utility easements are within portions of the front yard setback zone. Structures cannot be constructed on top of utility easements making compliance with the ordinance impossible or making the structures proposed noncompliant with other regulations while encroaching onto the easement.
- Ultimately, the applicant failed to provide evidence showing how the proposed development is commensurate with the development upon other parcels with the same zoning.
- If a list were to be provided, staff would support this request with the recommendation being subject to the submitted site plan.

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:

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

GENERAL FACTS/STAFF ANALYSIS

The subject site is zoned is zoned Subarea 2B within Planned Development District No. 716. The PD dictates how structures must be located within the front yard setback range of 15 to 60 feet with no consideration of driveways and pedestrian access points. Therefore, while the proposed development is urban in nature, pulling a vast majority (70 percent) of the structures into the front yard setback area, the driveways ultimately cause the development to fail the compliance test, as measurements are taken to the nearest structures. The request for a

variance of up to 82 feet is specifically for those areas with structures up to 142 feet away from the front lot line.

The property contains 8.78 acres, is sloped, irregular in shape, and contains an abandoned right-of-way that still maintains functioning utility easements.

According to the site plan submitted with the request:

- The abandoned Winnetka Avenue section maintains a utility easement which must remain free of structures.
- The site is being developed with a mixed use multifamily and retail development with 32 overall structures.
- The property has 1,314 feet of frontage along Fort Worth Avenue; about 140 feet of frontage along Clinton Avenue; and, 1,290 feet of lower frontage (no direct access) along I-30 Freeway.

Compliance with the min/max front yard setback would cause the structures proposed to sit atop of active utility easements, which is not allowed. The applicant states it would be cost prohibitive to relocate these utilities and cause an encroachment onto the easement, creating an unnecessary hardship; however, no estimate was provided.

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 Subarea 2B within Planned Development District No. 716 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 Subarea 2B within Planned Development District No. 716 zoning classification.

As of April 13, 2022, no 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 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:

- February 15, 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.
- March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 15, 2022: 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 March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- March 30, 2022: The applicant submitted additional evidence for consideration (**Attachment A**).
- March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board

BOARD OF ADJUSTMENT ACTION: April 20, 2022

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

APPEARING IN OPPOSITION: Javier Melendez 3632 Rialto Way Dallas, TX

MOTION: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 212-036, **hold** this matter under advisement until **May 18, 2022**.

SECONDED: Shouse

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz

NAYS: 0 -
MOTION PASSED: 4 - 0 (unanimously)

MOTION: Gambow

I move to adjourn the Panel B hearing.

SECONDED: Karnowski
AYES: 4 - Shouse, Karnowski, Gambow, Resendiz
NAYS: 0 -
MOTION PASSED: 4 - 0 (unanimously)

The meeting was adjourned at **1:45 P.M. on April 20, 2022**



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.