

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
MONDAY, MAY 16, 2022**

MEMBERS PRESENT AT BRIEFING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Rodney Milliken, regular member, Jared Slade, regular member, and Andrew Finney, alternate member

MEMBERS ABSENT FROM BRIEFING: Judy Pollock, regular member

MEMBERS PRESENT AT HEARING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Rodney Milliken, regular member, Jared Slade, regular member, and Andrew Finney, alternate member

MEMBERS ABSENT FROM HEARING: Judy Pollock, regular member

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, Sarah May, Chief Planner, David Nevarez, Senior Traffic Engineer, and Andreea Udrea, Assistant Director.

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, Sarah May, Chief Planner, David Nevarez, Senior Traffic Engineer, and Andreea Udrea, Assistant Director.

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, **May 16, 2022 docket.**

BOARD OF ADJUSTMENT ACTION: May 16, 2022

1:08 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 April 18, 2022 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: May 16, 2022

MOTION: Sashington

Approval of the Board of Adjustment Panel C April 18, 2022 public hearing minutes.

SECONDED: Milliken

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Approval of the Board of Adjustment Panel C January 11, 2022 Special meeting minutes.

BOARD OF ADJUSTMENT ACTION: May 16, 2022

MOTION: Agnich

Approval of the Board of Adjustment Panel C amended April 18, 2022 public hearing minutes.

SECONDED: Slade

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-039(PD)

BUILDING OFFICIAL’S REPORT: Application of Robert Elliot represented by Matthew Murrey for a special exception to the fence height regulations at 4015 Cochran Chapel Road. This property is more fully described as Lot A in City Block 5077 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 a nine-foot-six-inch-tall fence, which will require a five-foot-six-inch special exception to the fence regulations.

LOCATION: 4015 Cochran Chapel Road

APPLICANT: Robert Elliot represented by Matthew Murrey

REQUEST:

The applicant proposes a fence with staggered heights ranging from five feet nine inches to nine feet six inches, constructed of iron fencing and brick columns with an iron motorized gate located along Cochran Chapel Road. The site is currently developed with a two-story single-family dwelling and partially installed with the proposed fence.

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-10(A) (Single Family District)
West: R-10(A) (Single Family District)

Land Use:

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

Zoning/BDA History:

There has been one related board case in the vicinity within the last five years.

1. BDA189-126: On November 18, 2019, Panel C, Board of Adjustment granted a special exception to the fence standards regulations at 4047 Cochran Chapel Road.

GENERAL FACTS/STAFF ANALYSIS:

The request for a special exception to the fence height regulations is proposed to construct and maintain a nine-foot-six-inch-tall fence which will require a five-foot-six-inch special exception.

The property is currently developed. The applicant proposes a fence with a maximum height of nine feet six inches. The proposed fence will be constructed of seven-foot-three-inch iron fencing with eight-foot-tall brick columns located along Cochran Chapel Road at a length of approximately 338 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 Cochran Chapel Road is located on the front lot line with a depth of approximately one-foot.
- The proposed fence contains 23 brick columns.
- The proposed fence provides two gates: one for pedestrian traffic with an approximate width of five feet one-and-one-half-inches while the second gate is motorized and proposed for vehicular traffic with an approximate width of 18 feet. Both gates are proposed along Cochran Chapel Road.
- While the fence proposes staggered heights of five feet nine inches, seven feet three inches to eight feet-in-height, approximately thirty-seven feet nine inches of the proposed fence will run atop of a creek headwall. This portion of the fence increases the height of the fence to nine feet six inches.

According to the Dallas County Appraisal District (DCAD) records the site is developed with a two-story single-family dwelling consisting of approximately 7,474 square feet with additional improvements consisting of an approximately 1,985-square-foot unfinished space, an approximately 1,092-square-foot attached garage, and a pool constructed in 2021.

The representative provided evidence (**Attachment A**) with the application packet depicting renderings of three properties along the same street (Cochran Chapel Road) with fencing and gates of similar heights.

As of May 5, 2022, no 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 nine feet six inches located on Cochran Chapel Road will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to the height would require the proposal exceeding four feet-in-height in the front yard setback located along Cochran Chapel Road to be maintained in the locations and heights as shown on the site plan and elevation plan.

Timeline:

February 16, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents (**Attachment A**) that have been included as part of this case report.

April 12, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 4, 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

April 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Chief Arborist, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT ACTION: May 16, 2022

APPEARING IN FAVOR: Matthew Murrey 4015 Cochran Chapel Rd. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Finney

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code, as applicable to wit:

BDA 212-039—Application of Robert Elliot represented by Mathew Murrey for a special exception to the fence height regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with the submitted site plan and elevation is required.

SECONDED: Milliken

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

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

FILE NUMBER: BDA212-044(JM)

BUILDING OFFICIAL'S REPORT: Application of Alan Coretz for a special exception to the single-family regulations at 2711 W. 10th Street. This property is more fully described as Lot 20, Block 4581, and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one per lot or legal build site.

LOCATION: 2711 W. 10th Street

APPLICANT: Alan Coretz

REQUEST:

The applicant proposes to remodel and maintain an additional dwelling unit (not for rent), which will require a special exception to the single-family use regulations.

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

Section 51(A)-4.209(6)(E)(i) of the Dallas Development Code states that the board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

STAFF RECOMMENDATION:

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

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The site is currently developed with a single-family structure. The property is zoned an R-7.5(A) Single Family District. In this district, one dwelling unit is allowed per lot/build site. The applicant would like to accommodate an additional dwelling unit (not for rent) as an office and family guest house. This request necessitates a special exception to the single-family use regulations.

According to Dallas County Appraisal District (DCAD) records, the property was developed in 1972. The site has a main structure with approximately 2,205 square feet of floor area, a 240-square-foot attached garage, a 504-square-foot detached garage, and a 504-square-foot detached quarters. City permit records confirm the main structure was erected in the early 1970s and the detached garage and quarters were built in 1981. The applicant is seeking to renovate the existing ADU, which now requires a special exception to the single-family use regulations. The structure in place is nonconforming as to the side yard setback, floor area ratio, and height of an accessory structure. The land use could not be confirmed by the applicant in a search of historical City records.

According to the site plan provided, the lot is about 50 feet by 172-feet-in-size, or 8,633 square feet in area. The detached garage and quarters are shown 12 feet from the property line along the alleyway. The accessory structure has a footprint of about 500 square feet per floor level, with a total of about 1,000 square feet. The main structure, with a floor area of 2,205 square feet, would permit an accessory structure of up to 551 square feet. However, since the structure is nonconforming, the accessory structure rule for floor area ratio does not apply.

A floor plan provided shows the existing accessory structure will be used as the proposed ADU (not for rent). Overall, the collection of rooms including a kitchen on the first floor, and two restrooms, one on each level, plus the upstairs bedroom equate to a separate, detached living quarters.

The applicant has the burden of proof in establishing that the special exception to the single-family use regulations will not adversely affect neighboring properties. In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

As of May 9, 2022, staff had not received any letters regarding this request.

If the board were to grant the special exception to the single-family use regulations, the building footprint of the ADU on the site would be limited to what is shown on the site plan. Furthermore, the Dallas Development Code states that the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations. The deed restriction process is completed through our City Attorney's Office if the special

exception is approved. After meeting this obligation, the site will be eligible for a permit for the ADU. Ultimately, granting these special exception requests will not provide any relief to the Dallas Development Code regulations other than what is described in this report and decided upon by the board (i.e. development on the site must meet all other code requirements).

Timeline:

March 11, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 12, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 4, 2022: The Board Administrator 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Chief Arborist, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT ACTION: May 16, 2022

APPEARING IN FAVOR: Alan Coretz 7615 Currin Dr. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Slade

I move that the Board of Adjustment, in request No. BDA 212-044, on application of Alan Cortez, **grant** the request to construct and maintain an accessory dwelling unit on a site developed with a single-family structure as a special exception to the single-family use regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring properties.

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

Compliance with the submitted site plan is required.

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

SECONDED: Sashington

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

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA212-040(PD)

BUILDING OFFICIAL’S REPORT: Application of Pierre Esparza represented by Rogelio Esparza for a special exception to the fence height regulations at 5933 Northaven Road. This property is more fully described as Lot 17 in City Block C/6384 and is zoned an R-16(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct a six-foot-tall fence, which will require a two-foot special exception to the fence regulations.

LOCATION: 5933 Northaven Road

APPLICANT: Pierre Esparza represented by Rogelio Esparza

REQUEST:

The applicant proposes a fence with a maximum height of six feet, located approximately five feet one inch from the front lot line along Northaven Road. The site is currently developed with a two-story single-family dwelling.

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

Land Use:

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

Zoning/BDA History:

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

2. BDA189-077: On August 21, 2019, Panel B, Board of Adjustment granted a special exception to the visual obstruction regulations at 5609 Del Roy Drive.
3. BDA178-023: On February 21, 2018, Panel B, Board of Adjustment granted a special exception to the fence standards regulations at 6207 Yorkshire Drive.
4. BDA178-071: On June 20, 2018, Panel B, Board of Adjustment granted a special exception to the fence standards regulations at 6207 Yorkshire.
5. BDA178-117: On November 12, 2018, Panel C, Board of Adjustment granted special exceptions to the fence standards and visual obstruction regulations at 11339 Royalshire Drive.

GENERAL FACTS/STAFF ANALYSIS:

The request for a special exception to the fence height regulations is proposed to construct and maintain a six-foot-tall fence which will require a two-foot special exception.

The property is currently developed with a two-story single-family dwelling unit. The applicant proposes a fence with a maximum height of six feet, constructed of cast stone or plaster columns with the fencing proposed of painted metal slats. Additionally, a 16-foot-wide vehicular gate is proposed on rubber rollers located along Northaven Road at a length of approximately 99.62 feet and a depth of 61 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-16(A) Single Family District and requires a minimum front yard setback of 35 feet.

The following information is shown on the submitted site plan:

- The fence with access gates along Northaven Road proposed is five feet one inch tall, located behind the front lot line with a depth of 61 feet.
- The proposed fence contains 18 cast stone or plaster columns.
- The proposed fence provides two gates: one for pedestrian traffic with an approximate width of five feet while the second gate is proposed for vehicular traffic with an approximate width of 16 feet. Both gates are proposed along Northaven Road.

According to Dallas County Appraisal District (DCAD) records, the site is developed with a two-story single-family dwelling consisting of approximately 6,404 square feet with additional improvements consisting of an approximately 204 square foot outdoor living area and an approximately 738 square foot attached garage constructed in 2021.

As of May 5, 2022, no letters have been submitted in support of the request and two 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 six feet located on Northaven Road will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to the height would require the proposal exceeding four feet-in-height in the front yard setback located along Northaven Road to be maintained in the locations and heights as shown on the site plan and elevation plan.

Timeline:

Feb. 28, 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.

April 12, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 4, 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

April 28, 2022:

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

BOARD OF ADJUSTMENT ACTION: May 16, 2022

APPEARING IN FAVOR: Rogelio Esparza 4402 Sherwood Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Sashington

I move that the Board of Adjustment, in Appeal No. BDA 212-040, on application of Pierre Esparza represented by Rogelio Esparza **deny** the special exception requested by this applicant to construct and/or maintain a six-foot high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Agnich

AYES: 5 – Milliken, Slade, Finney, 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.

UPDATE:

On April 29th, the representative conceded that the site does not have sufficient area to provide the residential buffer zone along the eastern portion of the site and the street buffer zone along the western portion of the site. Therefore, the representative requested a date and time to amend the Board application to include a request for a special exception to the landscape requirement. However, the deadline to provide revisions to staff was 1:00p.m. on April 27th. Since the representative missed the deadline to provide an alternate landscape plan for review and approval by staff, the representative is requesting a postponement to the June hearing.

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):

Approval, subject to compliance with the submitted site plan.

Rationale:

Staff concludes that the subject site is unique and different from most lots in the CR Community Retail District considering its restrictive lot area of 14,008 square feet. The applicant submitted a document (**Attachment A**) comparing lot size/area of six properties within the same zoning district. Per the comparative analysis, the average lot area is 34,609 square feet. Thus, in analyzing the comparative properties the restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

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:

Site: CR Community Retail District
North: CR-D Community Retail District w/a D Liquor Control Overlay
East: R-5(A) Single Family District
South: CR Community Retail District
West: 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 and floor area.

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 applicant submitted revised documents (**Attachment C**) comparing lot size/area of six properties within the same zoning district. Per the comparative analysis, the average lot area is 34,609 square feet while the subject site provides a lot area of 14,008 square feet. Thus, in analyzing the comparative properties the restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

The 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 May 5, 2022, no letters have been submitted in support 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 to 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**).

March 21, 2022: The applicant requested a postponement to the Panel C Board of Adjustment hearing to May.

March 24, 2022: Staff informed the representative that the subject site triggered compliance with Article X.

April 27, 2022: The representative provided revised evidence to staff (**Attachment C**) for staff consideration.

April 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Chief Planner, the Chief Arborist, the Senior Engineer, and the Assistant City Attorney to the board.

April 29, 2022: The representative conceded that the site does not have sufficient area to provide the residential buffer zone along the eastern portion of the site and the street buffer zone along the western portion of the site. Therefore, the representative requested a date and time to amend the Board application to include a request for a special exception to the landscape requirement. However, the deadline to provide revisions to staff was 1:00p.m. on April 27th. Since the representative missed the deadline to provide an alternate landscape plan for review and approval by staff, the representative is requesting a postponement to the June hearing.

May 2, 2022: The Senior Engineer within the Transportation Development Services Division of the Department of Transportation recommends “no objection” the request (**Attachment B**).

Minutes:

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

BOARD OF ADJUSTMENT ACTION: May 16, 2022

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

APPEARING IN OPPOSITION: None.

MOTION: Milliken

I move that the Board of Adjustment, in Appeal No. BDA 212-012, **hold** this matter under advisement until **August 15, 2022**.

SECONDED: Agnich

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

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

MOTION: Agnich

I move to adjourn the Panel C hearing.

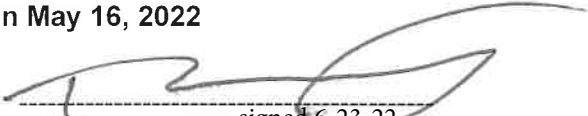
SECONDED: Sashington

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

NAYS: 0 -

MOTION PASSED (unanimously): 5 - 0

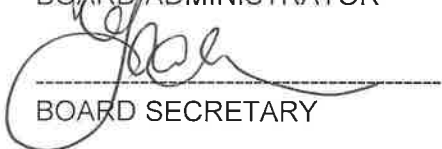
The meeting was adjourned at **2:04 P.M. on May 16, 2022**



 CHAIRPERSON signed 6-23-22



 BOARD ADMINISTRATOR



 BOARD SECRETARY

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