

RECEIVED

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE  
MONDAY, JUNE 21, 2021**

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CITY SECRETARY  
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, regular member, Judy Pollock, regular member, Robert Agnich, regular member, Moises Medina, regular member and Roger Sashington, regular member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, regular member, Judy Pollock, regular member, Robert Agnich, regular member, Moises Medina, regular member and Roger Sashington, regular member

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Anna Holmes, Asst. City Attorney, Oscar Aguilera, Senior Planner, Pamela Daniel, Senior Planner, Robyn Gerard, Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, Neva Dean, Assistant Director, Carolina Yumet, Interim Assistant Director and Kris Sweckard, Director.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Anna Holmes, Asst. City Attorney, Oscar Aguilera, Senior Planner, Pamela Daniel, Senior Planner, Robyn Gerard, Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, Neva Dean, Assistant Director, Carolina Yumet, Interim Assistant Director and Kris Sweckard, Director.

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**11:18 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, **June 21, 2021 docket.**

**BOARD OF ADJUSTMENT ACTION: June 21, 2021**

**1:14 P.M.**

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

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### **MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel C, May 17, 2021 public hearing minutes.

### **BOARD OF ADJUSTMENT ACTION: June 21, 2021**

#### **MOTION: Sashington**

Approval of the Board of Adjustment Panel C, May 17, 2021 public hearing minutes.

#### **SECONDED: Hounsel**

**AYES:** 5 – Hounsel, Pollock, Agnich, Sashington, Medina

**NAYS:** 0

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

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**FILE NUMBER:** BDA201-047(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Rob Baldwin for a special exception to the fence height regulations, and for a variance to the front yard setback regulations at 5500 Chatham Hill Road. This property is more fully described as Part of Lot 25, Block 7/5597, 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 front yard setback of 40 feet. The applicant proposes to construct and maintain an eight-foot six-inch-high fence in a required front yard, which will require a four-foot six-inch special exception to the fence regulations, and to construct a single-family residential accessory structure and provide a 10-foot front yard setback, which will require a 30-foot variance to the front yard setback regulations.

**LOCATION:** 5500 Chatham Hill Road

**APPLICANT:** Rob Baldwin

#### **REQUESTS:**

The purpose of these requests is to construct and maintain a 1,175-square-foot accessory structure and an eight-foot-high solid masonry fence and maintain an eight-foot six-inch-tall solid metal/stone fence with a pedestrian gate in both 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:

- 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.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-1a(A) District by its restrictive area due to having two front yards and having an irregular shape that includes a water way that dissects the eastern portion of the lot that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-1a(A) District (see application materials).
- The document submitted also indicates that the proposed addition on the subject site is commensurate to nine other lots, with similar development located within one of the two required front yard setback (Hollow Way Road) of the lot and within the same R-1a(A) District.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS  
(Height and Opacity):**

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

**STAFF RECOMMENDATION:**

No staff recommendations are made on these or any requests for a special exception to the fence standards since the basis for this type of appeals is when in the opinion of the board, the special exceptions will not adversely affect neighboring property.

**Zoning:**

**Site:** R-1 ac(A) (Single Family District)

**North:** R-1 ac(A) (Single Family District)

**East:** R-1 ac(A) (Single Family District)

**South:** R-1 ac(A) (Single Family District)

**West:** R-1 ac(A) (Single Family District)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA190-068, Property located at 15505 Chatham Hill Road (Property located to the north)

On August 19, 2020, the Board of Adjustment Panel B granted a request to installing and maintaining an additional electrical utility service and electrical meter.

2. BDA178-086, Property located at 15505 Chatham Hill Road (Property located to the north)

On August 22, 2018, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 28-feet nine-inches to construct and maintain a one-story additional dwelling unit structure with a total “additional dwelling size” of approximately 5,880 square feet, part of which is to be located 11-feet three-inches from one of the site’s two front property lines (Hollow Way Road) or 28-feet nine-inches into this 40-foot front yard setback; a request for a special exception to the single family use regulations to construct and maintain a one-story “additional dwelling unit” structure; a request for a special exception to the fence standards related to fence height of five feet to construct and maintain fences higher than four feet in height in the one of the site’s two 40-foot front yard setbacks (Hathaway Street) – a seven-to-eight-foot solid masonry fence with sliding gates and a seven-foot-high chain-link fence; a request for a special exception to the fence standards related to fence height of five feet is made to construct and maintain fences higher than four-feet-in-height in the other 40-foot front yard setback (Hollow Way Road) – a six-foot six-inch to nine-foot solid masonry fence with sliding gates and a seven-foot-high chain-link fence; and a requests for special exceptions are made to construct and maintain fence panels with surface areas that are less than 50 percent open.

The Board of Adjustment imposed the submitted site plan, and elevation as a condition and required the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

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

The purpose of these requests is to construct and maintain a 1,175-square-foot accessory structure and an eight-foot-high solid masonry fence and maintain an eight-foot six-inch-tall solid metal/stone fence with a pedestrian gate in both front yards.

The subject site is zoned an R-1a(A) Single Family District which requires a minimum front yard setback of 40 feet. The property is located at the southeast corner of Hollow Way Road and Chatham Hill Road. The structure is proposed to be oriented towards Hollow Way Road. However, the lot has a 40-foot front yard setback along both street frontages to maintain the continuity of the front yard setback established by the lots to the south that are oriented towards Hollow Way Road and lots to the northeast that are oriented towards Chatham Hill Road.

The subject site is irregular in shape, sloped, and the property includes a water way that dissects the eastern portion of the lot. According to the application, the lot is 1.234 acres (or approximately 53,753 square feet) which for lots in an R-1 a(A) zoning districts, the minimum lot size is one acre or 43,560 square feet. The applicant submitted a document (**Attachment A**) indicating that the proposed addition on the subject site is commensurate to nine other lots, with similar development located within one of the two required front yard setback (Hollow Way Road) of the lot and within the same R-1a(A) District.

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

If the board were to grant the variance request and impose the submitted site plan as a condition, the single-family structure in the front yard setback would be limited to what is shown on this document.

The requests for special exceptions to the fence standards regulations related to height and fence panel materials/location from a front lot line focus on:

- constructing and maintaining an eight-foot solid masonry fence and maintaining an eight-foot six-inch-tall solid metal/stone fence with a pedestrian gate located in one of the site's two front yard setbacks (Hollow Way Road).
- constructing and maintaining an eight-foot solid masonry fence and maintaining an eight-foot six-inch-tall solid metal/stone fence with a pedestrian gate located in one of the site's two front yard setbacks (Chatham Hill Road).

Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. As noted, the proposed fence would be within the required 40-foot front yard setback.

Additionally, the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five from the front lot line.

The submitted site plan and elevation denotes a proposed eight-foot solid masonry fence and an existing eight-foot six-inch-tall solid metal/stone fence located within both required front yards and as close as being along the property line.

The following additional information was gleaned from the submitted revised site plan:

- The proposed masonry fence is approximately 120 feet in length parallel to Chatham Hill Road and Hollow Way and runs between 40 to 10 feet perpendicular to the front property line of these streets.
- The distance between the proposed fence and the pavement line is between 19 to 47 feet.

Staff conducted a field visit of the site and surrounding area and noted several fences that appeared to be above four feet-in-height in the required front yard on Hollow Way Road.

As of June 11, 2021, no letters have been submitted in opposition or in support of the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of four-feet six-inches and to location and materials located on Hollow Way Road and Chatham Hill Road will not adversely affect neighboring property.

Granting these special exceptions to the fence standards related to the height and opacity would require the proposal exceeding four feet-in-height in the front yard setbacks located on Hollow Way Road and Chatham Hill Road front yards and exceeding 50 percent opacity to be maintained in the locations and of the heights and materials as shown on these documents.

#### **TIMELINE:**

- |                |   |
|----------------|---|
| April 8, 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.  |
| May 18, 2021:  | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.   |
| May 21, 2021:  | The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information: <ul style="list-style-type: none"><li>• An attachment that provided the public hearing date and panel that will consider the application; the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their</li></ul> |

analysis; and, the June 11<sup>th</sup> 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.

June 3, 2021: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (**Attachment A**).

June 4, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board..

No review comment sheets were submitted in conjunction with this application.

**BOARD OF ADJUSTMENT ACTION: June 21, 2021**

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

**APPEARING IN OPPOSITION:** None.

**MOTION: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 201-047, on application of Rob Baldwin of Baldwin Associates, **grant** the special exceptions to the fence height regulations and a variance to the front yard setback regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

**SECONDED: Agnich**

**AYES: 5 - Hounsel, Pollock, Agnich, Sashington, Medina**

**NAYS: 0 –**

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

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**FILE NUMBER: BDA201-052(JM)**



**BUILDING OFFICIAL'S REPORT:** Application of Jeff Baron for a variance to the side yard setback regulations at 6401 Richmond Avenue. This property is more fully described as Part of Lot 15, Block B/2788 and is zoned Tract III within Conservation District No. 2, which requires a side yard setback of up to 15 feet. The applicant proposes to construct a single-family residential structure and provide a five-foot corner side yard setback, which will require a 10-foot variance to the corner side yard setback regulations on the west side, and to construct a single-family residential structure and provide a five-foot side yard setback on the east side yard setback, which will require a one-foot variance to the side yard setback regulations on the east side.

**LOCATION:** 6401 Richmond Avenue

**APPLICANT:** Jeff Baron

**REQUESTS:**

The applicant requests variances to the side yard and cornerside yard setback regulations to construct a single-family residential structure and provide a five-foot corner side yard setback on the west side and a five-foot side yard setback on the east side. The site is currently undeveloped.

**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.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site is unique and different from most lots in Tract III within Conservation District No. 2 considering its restrictive lot area of 9,500 square feet combined with an architectural standard requiring a minimum facade width of 40 feet, so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning.

The applicant submitted a document (**Attachment A**) with the application materials indicating that the facade width requirement is incompatible with the required side yard and cornerside yard setbacks since the remaining width would be less than the minimum standard required.

The applicant further posits that constructing a single-family home on the property, in accordance with all other CD requirements, makes the proposed structure on the subject site commensurate to 28 other lots located in the same zoning district despite these deficiencies, but requiring the requested variances to the side and cornerside yard setbacks.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: Tract III within CD No. 2  
North: CD No. 2  
East: Tract III within CD No. 2  
South: PD No. 281  
West: PD No. 281

#### **Land Use:**

The subject site is undeveloped. The areas to the northeast and east are developed with single-family uses. Properties to the northwest, west, and south have a mix of retail uses and an animal care clinic.

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

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

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

The applicant requests variances to the side yard and cornerside yard setback regulations to construct a single-family residential structure and provide a five-foot corner side yard setback on the west side and a five-foot side yard setback on the east side. The site is currently undeveloped.

The property is zoned Tract III within CD No. 12, the Lakewood Conservation District. Tract III requires a side yard setback of six feet and a cornerside yard setback of 15 feet.

According to historical records, the subject vacant lot has never been developed. DCAD records indicate that the neighboring house was erected in 1927 and is situated on a portion of the lot shared by the applicant's site. The remaining portion of the lot is 50 feet wide by 190 feet long,

containing about 9,500 square feet of area. Tract III has a minimum lot size of 10,000 square feet.

The applicant is proposing to develop the site with a single-family structure, in accordance with the requirements of the zoning district. However, the CD also requires a minimum lot width of 70 feet and a minimum facade width of 40 feet in Tract III. Since the lot is 50 feet wide, and with a side yard and cornerside yard setback totaling 21 feet, the remaining width to develop is 29 feet. The applicant has requested variances totaling 11 feet, which would make the proposed structure comply with the 40-foot facade minimum requirement for the CD.

The applicant's evidence shows how 28 other properties with a cornerside yard in the same district are larger and developed with single-family uses. Overall, the applicant argues that the site is encumbered with multiple deficiencies which do not allow for the development of the site to meet the requirements of the zoning district without these variances.

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

- That granting the variances to the side yard and cornerside 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same Conservation District No. 12 zoning classification.
- The variances would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same Conservation District No. 12 zoning classification.

If the board were to grant the variance requests and impose the submitted site plan as a condition, the structure in the side yard and cornerside yard setbacks would be limited to what is shown on this document.

**Timeline:**

- |                 |   |
|-----------------|---|
| April 20, 2021: | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report ( <b>Attachment A</b> ).   |
| May 14, 2021:   | The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.  |
| May 20, 2021:   | The Board Administrator emailed the applicant the following information: <ul style="list-style-type: none"><li>• a copy of the application materials including the Building Official's report on the application.</li></ul> |

- an attachment that provided the public hearing date and panel that will consider the application; the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 11<sup>th</sup> 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.

June 4, 2021:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Sign Code Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

**BOARD OF ADJUSTMENT ACTION: June 21, 2021**

**APPEARING IN FAVOR:** Jeff Baron 8600 Forest Hills Blvd. Dallas, TX

**APPEARING IN OPPOSITION:** None.

**MOTION: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 201-052, on application of Jeff Baron, **grant** the variances to the side yard and corner side yard setback regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

**SECONDED: Sashington**

**AYES: 5 - Hounsel, Pollock, Agnich, Sashington, Medina**

**NAYS: 0 -**

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

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**FILE NUMBER:** BDA190-055(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Santos Martinez for a variance to the side yard setback regulations at 6042 Palo Pinto Avenue. This property is more fully described as Lot 11, Block 12/1898, and is zoned Conservation District No. 12, which requires a side yard setback of five feet. The applicant proposes to construct and maintain a single-family residential structure and provide a two-foot six-inch side yard setback, which will require a two-foot six-inch variance to the side yard setback regulations.

**LOCATION:** 6042 Palo Pinto Avenue

**APPLICANT:** Santos Martinez

**REQUEST:**

A request for a variance to the side yard setback regulations of two-feet six-inches is made to remodel, expand, and maintain an approximately 2,700-square-foot single family home located two-feet six-inches from the site's west side property line or two-feet six-inches into the five-foot side yard setback.

**STANDARD FOR A VARIANCE:**

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

- 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.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site is unique and different from most lots in the Conservation District No. 12 considering its restrictive lot area of 8,750 square feet so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning.

The applicant submitted a document (**Attachment A**) indicating, among other things, that the proposed structure on the subject site is commensurate to 17 other lots located in the same zoning district.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: Conservation District No. 12

North: Conservation District No. 12  
East: Conservation District No. 12  
South: Conservation District No. 12  
West: Conservation District No. 12

**Land Use:**

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

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

**GENERAL FACTS /STAFF ANALYSIS:**

The purpose of this request for a variance to the side yard setback regulations of two-feet six-inches is made to remodel, expand, and maintain an approximately 2,700-square-foot single family home structure located two-feet six-inches from the site's west side property line, as shown in the submitted site plan.

The existing single-family structure, located two-feet six-inches from the west side property line, was erected in 1926. The applicant is proposing to remodel the home with a second floor to meet the family's needs. The lot is 8,750 square feet in area, rectangular in shape, and has a slight slope. The minimum lot size in Conservation District No. 12 is 7,500 square feet.

The applicant submitted a document with this application, indicating among other things that that the total proposed home size with the addition on the subject site is 2,722 square feet and the average of 17 other properties in the same zoning is approximately 3,476 square feet.

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 Conservation District No. 12 zoning district 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 Conservation District No. 12 zoning district classification.

If the board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on these documents which, in this case, is a structure located two-feet six-inches into the required five-foot side yard setback.

**Timeline:**

- April 22, 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.
- May 14, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.
- May 21, 2021: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 11<sup>th</sup> 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.
- June 1, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).
- June 4, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Sign Code Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.

**BOARD OF ADJUSTMENT ACTION: June 21, 2021**

**APPEARING IN FAVOR:** Santos Martinez P.O. Box 1275 Angel Fire, NM

**APPEARING IN OPPOSITION:** None.

**MOTION: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 201-055, on application of Santos Martinez, **grant** the variance to the side yard setback regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

**SECONDED: Agnich**

**AYES: 5 - Hounsel, Pollock, Agnich, Sashington, Medina**

**NAYS: 0 -**

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

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**FILE NUMBER:** BDA201-059(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Mario Acevedo represented by Jose Arellano for a variance to the front yard setback regulations, and for a special exception to the fence height regulations, and for a special exception to the fence standards regulations at 515 W. Danieldale Road. This property is more fully described as Lot 1, Block D/7587, and is zoned an R-7.5(A) Single Family District, which requires a front yard setback of 25 feet, 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 single-family residential structure and provide a 15-foot front yard setback, which will require a 10-foot variance to the front yard setback regulations, and to construct an eight-foot-high solid 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, which will require special exceptions to the fence regulations relating to height of four feet and openness (opacity).

**LOCATION:** 515 W. Danieldale Road

**APPLICANT:** Mario Acevedo represented by Jose Arellano

**REQUESTS:**

The purpose of these requests is to construct and maintain a 2,723-square-foot single-family structure and an eight-foot-tall solid wood fence within five feet of the front property line along Beckley View Avenue.

**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.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-7.5(A) single family zoning district considering its restrictive lot area of 9,900 square feet so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning classification.
- The applicant submitted a document (**Attachment A**) indicating that the proposed structure on the subject site is commensurate to eight other lots located in the same R-7(A) District.

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

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

**STAFF RECOMMENDATION:**

No staff recommendations are made on these or any requests for a special exception to the fence standards since the basis for this type of appeals is when in the opinion of the board, the special exceptions will not adversely affect neighboring property.

**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 is undeveloped. The areas to the north, east, west, and south are developed with single-family uses.

**Zoning/BDA History:**

There have been no related board or zoning cases near the subject site within the last five years.

**GENERAL FACTS/STAFF ANALYSIS:**

The subject site is zoned an R-7.5(A) Single Family District which requires a minimum front yard setback of 25 feet. The property is located at the northeast corner of W. Danieldale Road and Beckley View Avenue. Regardless of how the structure is proposed to be oriented towards Danieldale Road, the lot has a 25-foot front yard setback along both street frontages in order to maintain the continuity of the established front yard setback. This is established by the lots to the east that are oriented towards Danieldale Road and the lots to the north that are oriented towards Beckley View Avenue.

The request for a variance to the front yard setback regulations of 10 feet focuses on constructing and maintaining a single-family residential structure with approximately 2,723 square feet of floor area. The submitted site plan indicates the proposed structure is located 15 feet from the Beckley View Avenue's front property line or 10 feet into this 25-foot front yard setback. The 25-foot front yard setback on Danieldale Road will be maintained.

According to DCAD records, there are "no main improvements" and "no additional improvements" for the property addressed at 515 W. Danieldale Road.

The subject site is flat, rectangular in shape, and according to the application, it is 0.227 acres or approximately 9,900 square feet in area. In an R-7.5(A) District, the minimum lot size is 7,500 square feet. However, the applicant submitted a document with this application indicating that the proposed home with 2,723 square feet is similar to eight other properties in the same zoning containing approximately 2,837 square feet of floor area.

The applicant has the burden of proof in establishing that granting the variance to the front yard setback regulations meets all three sections of the variance standard. If the board were to grant the variance request and impose the submitted site plan as a condition, the single-family structure in the front yard setback would be limited to what is shown on this document.

The requests for special exceptions to the fence standards regulations related to height and fence panel materials/location from a front lot line focus on constructing and maintaining an eight-foot-tall solid wood fence within five feet of the front property line along Beckley View Avenue.

Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. As noted, the proposed fence would be within the required 25-foot front yard setback.

Additionally, the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five from the front lot line.

The submitted revised site plan also indicates that the fence is proposed to be located at the front property line or approximately seven feet from the pavement line along Beckley View Avenue and approximately:

- 109 feet-in-length parallel to the Beckley View Avenue property line
- 25 feet perpendicular to the street on the north side
- 15 feet perpendicular to the street on the on the south side

The Board of Adjustment Senior Planner conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above four feet-in-height in a required front yard.

As of June 11, 2021, four letters have been submitted in support or no letter 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 four feet and to location and materials on Beckley View Avenue will not adversely affect neighboring property.

Granting these special exceptions to the fence standards related to height of up to four feet and panel with a surface area that is less than 50 percent open to locate in certain areas on the site with a condition imposed that the applicant complies with the submitted site plan and elevation, would require the fence to be maintained in the locations and of the heights and materials as shown on these documents.

#### **TIMELINE:**

- April 22, 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.
- May 14, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.
- May 21, 2021: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 11<sup>th</sup> 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.
- June 4, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Sign Code Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.
- June 7, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

**BOARD OF ADJUSTMENT ACTION: June 21, 2021**

**APPEARING IN FAVOR:** Jose Arellano 520 N. Roberts Rd. Cedar Hill, TX

**APPEARING IN OPPOSITION:** None.

**MOTION: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 201-059, on application of Jose Arellano, **grant** the variance to the front yard setback regulations and special exceptions the

fence height regulations and the surface area openness requirements for fence regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan and elevation is required.

**SECONDED: Agnich**

**AYES:** 5 - Hounsel, Pollock, Agnich, Sashington, Medina

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA201-039 (OA)

**BUILDING OFFICIAL'S REPORT:** Application of Michael Poole represented by Thomas O'Brien for a variance to the front yard, and for a special exception to the visibility obstruction regulations at 930 Stewart Drive. This property is more fully described as Lot 4, Block 5/3838, and is zoned Subarea 2 within Conservation District No. 13, which requires a front yard setback of 36 feet, and requires visibility triangles at driveway and alley approaches. The applicant proposes to construct and maintain a residential accessory structure (fence) in a required front yard, which will require a 36-foot variance to the front yard setback regulations and provide a 0-foot front yard setback, and to construct a single-family residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulations.

**LOCATION:** 930 Stewart Drive

**APPLICANT:** Michael Poole represented by Thomas O'Brien

**REQUESTS:**

The applicant requests to maintain an eight-foot-high solid wood board-on-board fence with a vehicular gate in one of the site's two required front yards (Turner Avenue). Conservation District No. 13 provisions prohibit fences in a front yard within Subarea 2. If the variance to the front yard is granted, the area would no longer be considered a front yard, thereby allowing the fence. Additionally, portions of the fence and vehicular gate obstruct two 20-foot visibility triangles at the intersection of the street and the driveway approaches into the site from Turner Avenue and at the intersection of Turner Avenue and the alley.

**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.

**STAFF RECOMMENDATION:**

Staff recommends approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that two front yard setbacks along Stewart Drive and Tuner Avenue, a slight slope, a need to create a safe area for children and animals, and a comparison table (**Attachment B**) showing that the subject site cannot be developed in a manner commensurate with the development upon other parcels with the same zoning support the request for a variance to the front yard setback to allow for the fence. Granting this variance to allow the fence in the front yard would permit the applicant to use the property similarly to other properties within Subarea 2 within CD No. 13 and will not relieve a self-created or personal hardship.

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

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

**STAFF RECOMMENDATION:**

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

The Sustainable Development and Construction Senior Engineer reviewed the proposed obstructions for the fence and recommends denial of the requests stating that the City should aggressively manage obstructions to visibility triangles. Exceptions to visibility standards should only be considered for unique circumstances and/or hardship.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD No. 13 Subarea 2 (Conservation District)  
North: CD No. 13 Subarea 2 (Conservation District)  
South: CD No. 13 Subarea 2 (Conservation District)  
East: CD No. 13 Subarea 2 (Conservation District)  
West: CD No. 13 Subarea 2 (Conservation District)

**Land Use:**

The subject site is undeveloped. The areas to the north, south, and east and west are developed with residential uses.

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

**GENERAL FACTS/STAFF ANALYSIS:**

This request for a variance to the front yard regulations focuses on maintaining an eight-foot-high solid wood board-on-board fence with a vehicular gate in one of the site's two required front yards (Tuner Avenue). Conservation District No. 13 provisions prohibit fences in a front yard within Subarea 2. If the variance to the front yard is granted, the area would no longer be considered a front yard, thereby allowing the fence.

According to DCAD records, the "main improvements" for the property addressed at 930 Stewart Drive include a single-family structure built in 1926 with 1,886 square feet of living/total area. DCAD shows a 400-square-foot detached garage and a 182-square-foot detached quarters, as well.

The submitted revised site plan/elevation denotes – an eight-foot-high solid wood board-on-board fence with a vehicular gate located at the property line in one of the site's two front yards (Tuner Avenue).

The subject site has a slight slope, is regular in shape, and, according to the application, is 7,500 square feet in area. The site also has a double front yard setback requirement limiting the usable yard space for possible fencing and privacy.

The applicant has provided a document stating that the subject site is unique in that it is one of the few lots with a double frontage configuration which prevents the property from being developed in a manner commensurate with other properties within the same zoning district of Subarea 2 within CD No. 13.

The applicant has the burden of proof in establishing the following relating to the variance request:

- That granting the variance to the front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of 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 CD No. 13 (Subarea 2) 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 CD No. 13 (Subarea 2) zoning classification.

Additionally, Section 51A-4.602(d) of the Dallas Development Code states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

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

As further noted on the site plan, the proposed fence would obstruct the two 20-foot visibility triangles at the intersection of the street and the driveway approaches into the site from Turner Avenue and at the intersection of Turner Avenue and the alley.

The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “recommends denial” (**Attachment C**).

The applicant has the burden of proof in establishing how granting these requests to maintain portions of an eight-foot-high solid wood on wood fence with a vehicular gate within the two 20-foot visibility triangles at the intersection of the street and the driveway approaches into the site from Turner Avenue and at the intersection of Turner Avenue and the alley does not constitute a traffic hazard.

Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the fence exceeding four-feet-in-height in the front yard setback and all visual obstructions to be constructed in the locations and heights as shown on these documents.

**Timeline:**



- March 21, 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.
- April 6, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 8, 2021: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- An attachment that provided the public hearing date and panel that will consider the application; the April 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and, the May 7<sup>th</sup> 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 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.
- April 30, 2021: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report on this application to the Board Administrator (**Attachment A**).
- May 21, 2021: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- An attachment that provided the public hearing date and panel that will consider the application; the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and, the June 11<sup>th</sup> 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.

May 29, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment B**).

June 4, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

June 7, 2021: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Recommends that this be denied." (**Attachment C**).

**BOARD OF ADJUSTMENT ACTION: June 21, 2021**

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

**APPEARING IN OPPOSITION:** None.

**MOTION#1: Medina**

I move that the Board of Adjustment, in Appeal No. BDA201-039, on application of Michael Poole, represented by Thomas O'Brien, **GRANT** the thirty-six foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

**SECONDED: Pollock**

**AYES:** 5 - Hounsel, Pollock, Agnich, Sashington, Medina

**NAYS:** 0 -

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

**MOTION#2: Medina**

I move that the Board of Adjustment, in Appeal No. BDA201-039, on application of Michael Poole, represented by Thomas O'Brien, **GRANT** the thirty-six foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

**SECONDED: Pollock**

**AYES:** 4 - Hounsel, Pollock, Sashington, Medina

**NAYS:** 0 -

**MOTION PASSED (unanimously):** 4 – 0

**Note: Robert Agnich was in favor of the Motion but unable to record a vote due to technical issues and dropped connection during the vote.**

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**FILE NUMBER:** BDA201-050(JM)

**BUILDING OFFICIAL'S REPORT:** Application of John Paul Russell for a special exception to the fence height regulations, and for a special exception to the visibility obstruction regulations, and for a special exception to the visibility obstruction regulations at 8410 Garland Road. This property is more fully described as Lot 9, Block 4/4804, and is zoned an R-10(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a 20-foot visibility triangle at driveway and alley approaches and a 45-foot visibility triangle at street intersections. The applicant proposes to construct a seven-foot-high fence in a required front yard, which will require a three-foot special exception to the fence regulations, and to construct a single-family residential fence structure in the required visibility triangles, which will require special exceptions to the visibility obstruction regulations.

**LOCATION:** 8410 Garland Road

**APPLICANT:** John Paul Russell

**REQUESTS:**

A request for a special exception to the fence height regulations of three feet is made to construct and maintain a six-foot-high wrought iron fence with seven-foot-high brick columns in the required front yard along Garland Road. The proposed fence would obstruct a 45-foot visibility triangle at the Garland Road and St. Francis Avenue street intersection and three 20-foot visibility triangles, two on the driveway and one from the alley intersection all onto St. Francis Avenue. The property is developed with a single-family home.

### **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.

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

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

### **STAFF RECOMMENDATION:**

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

The Sustainable Development and Construction Senior Engineer reviewed the proposed obstructions for the fence and recommends denial of the requests stating that the City should aggressively manage obstructions to visibility triangles. Exceptions to visibility standards should only be considered for unique circumstances and/or hardship (**Attachment A**).

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: R-10(A) (Single Family District)  
Northwest: PD No. 287  
Northeast: R-10(A) (Single Family District)  
Southeast: PD No. 575  
Southwest: R-10(A) and R-1ac(A) (Single Family Districts)

#### **Land Use:**

The subject site is developed with a single family home. The Arboretum operates to the northwest. There are single family uses to the northeast, southeast, and southwest. White Rock Lake, a city park, is located farther southwest across Garland Road.

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

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

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

The purpose of these requests for special exceptions is to construct and maintain a six-foot-high wrought iron fence with seven-foot-high brick columns in the required front yard along Garland Road, and generally along the property line. The property is developed with a single-family home.

The subject site is zoned an R-10(A) Single Family District which requires a 30-foot front yard setback along the entire frontage of Garland Road. The proposed fence is to be located in this required front yard. The following information is shown on the submitted site plan:

- The proposed fence is approximately 150 feet-in-length along the property line and about 11 feet from the pavement line, parallel to Garland Road.
- The fence runs approximately 300 feet-in-length along the property line and about 16 feet from the pavement line, parallel to St. Francis Avenue.
- The fence runs approximately 150 feet parallel to the alleyway at the southeast property line.

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.

Staff conducted a field visit of the site and surrounding area and noticed other fences that appear to be above four feet-in-height and located in a front yard setback along with thick vegetation disguising front yards from view to Garland Road.

The applicant has the burden of proof in establishing that the special exception to the fence height regulation of up to three feet will not adversely affect neighboring properties.

Additionally, Section 51A-4.602(d) of the Dallas Development Code states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and alleys on properties zoned single family); and

- between two-and-a-half and eight-feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

As further noted on the site plan, the proposed fence would obstruct:

- the 45-foot visibility triangle at the street intersection of Garland Road and St. Francis Avenue;
- the two 20-foot visibility triangles from the driveway onto St. Francis Avenue; and,
- one 20-foot visibility triangle from the alley intersection onto St. Francis Avenue.

The Sustainable Development Department Senior Engineer has objections to the request and determined that the City of Dallas should aggressively manage obstructions to visibility triangles (**Attachment A**).

As of June 8, 2021, no letters have been received in opposition or support of this request.

The applicant has the burden of proof in establishing how granting these requests to maintain portions of a six-foot wrought iron fence with seven-foot-high brick columns in the 45-foot visibility triangle at the intersection of Garland Road and St. Francis Avenue, two 20-foot visibility triangles at the intersection of the street and driveway approaches into the property from St. Francis Avenue, and the 20-foot visibility triangle at the intersection of the alleyway and St. Francis Avenue does not constitute a traffic hazard (individually).

Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the fence exceeding four-feet-in-height in the front yard setback and all visual obstructions to be constructed in the locations and heights as shown on these documents.

### **Timeline:**

- |                 |   |
|-----------------|---|
| April 14, 2021: | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.   |
| May 14, 2021:   | The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.  |
| May 20, 2021:   | <p>The Board Administrator emailed the applicant the following information:</p> <ul style="list-style-type: none"> <li>• a copy of the application materials including the Building Official's report on the application.</li> <li>• an attachment that provided the public hearing date and panel that will consider the application; the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 11<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;</li> </ul> |

- 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.

June 2, 2021: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet (**Attachment A**).

June 4, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Sign Code Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

June 10, 2021: The applicant submitted additional evidence for consideration (**Attachment B**).

#### **BOARD OF ADJUSTMENT ACTION: June 21, 2021**

**APPEARING IN FAVOR:** John P. Russell 8410 Garland Rd. Dallas, TX

**APPEARING IN OPPOSITION:** None.

#### **MOTION#1: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA201-050, on application of John Paul Russell, **grant** the request of this applicant to construct and/or maintain a seven-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: Medina**

**AYES:** 5 - Hounsel, Pollock, Agnich, Sashington, Medina

**NAYS:** 0 -

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

#### **MOTION#2: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA201-050, on application of John Paul Russell, **grant** the request to maintain items in the visibility triangle at the street intersection as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

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

Compliance with the submitted site plan and elevation is required

**SECONDED: Medina**

**AYES:** 5 - Hounsel, Pollock, Agnich, Sashington, Medina

**NAYS:** 0 -

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

**MOTION#3: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA201-050, on application of John Paul Russell, **grant** the request to maintain items in the visibility triangle at the drive approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

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

Compliance with the submitted site plan and elevation is required.

**SECONDED: Medina**

**AYES:** 5 - Hounsel, Pollock, Agnich, Sashington, Medina

**NAYS:** 0 -

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

**MOTION#4: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 201-050, on application of John Paul Russell, **grant** the request to maintain items in the visibility triangles at the alley approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

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

Compliance with the submitted revised site plan and elevation is required.

**SECONDED: Medina**

**AYES:** 5 - Hounsel, Pollock, Agnich, Sashington, Medina

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA201-036(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Dallas City Council Resolution 21-0265 to require compliance of a non-conforming use at 1405 Martin Luther King, Jr. Boulevard. This property is more fully described as part of Lot 2 and all of Lots 3 and 4, Block 2/1137, and is



zoned an FWMU-3 Form Walkable Mixed-Use Subdistrict within Planned Development District No. 595 with an SH Shopfront Overlay, which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a non-conforming liquor store use.

**LOCATION:** 1405 Martin Luther King, Jr. Boulevard

**APPLICANT:** Dallas City Council by Resolution 21-0265  
Represented by Jill Haning and James Farrior

**REQUEST:**

A request is made for the Board of Adjustment to establish a compliance date for a non-conforming liquor store use (Big D Cut Rate Beer and Wine) on the subject site.

**COMPLIANCE REGULATIONS FOR NONCONFORMING USES:** SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

- (a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

- (i) The character of the surrounding neighborhood.
- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
- (iii) The manner in which the use is being conducted.

- (iv) The hours of operation of the use.
  - (v) The extent to which continued operation of the use may threaten public health or safety.
  - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
  - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
  - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
  - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
  - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
    - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
    - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
    - (cc) Any return on investment since inception of the use, including net income and depreciation.
    - (dd) The anticipated annual recovery of investment, including net income and depreciation.

(E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

(F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

### **GENERAL FACTS:**

The subject site is zoned an FWMU-3 Form Walkable Mixed-Use Subdistrict within Planned Development District No. 595 with an SH Shopfront Overlay. On September 26, 2001, City Council passed Ordinance No. 24726 which added a requirement that liquor store uses must obtain a Specific Use Permit (SUP) in this zoning district. However, a Certificate of Occupancy (CO) was issued for a liquor store use, Big D Cut Rate, December 13, 1990—predating the ordinance requiring an SUP. The Dallas Development Code defines a “nonconforming use” as “a use that does not conform to the use regulations of this chapter but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.” Therefore, the use was legally established in 1990 and became nonconforming with the passing of Ordinance No. 24726 in 2001. This use is still in operation today.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD No. 595, FWMU-3 Form Walkable Mixed-Use Subdistrict, SH Overlay

North: PD No. 595, FWMU-3 Form Walkable Mixed-Use Subdistrict, SH Overlay

South: PD No. 595, FWMU-3 Form Walkable Mixed-Use Subdistrict, SH Overlay

East: PD No. 595, FWMU-3 Form Walkable Mixed-Use Subdistrict, SH Overlay

West: PD No. 595, FWMU-3 Form Walkable Mixed-Use Subdistrict, SH Overlay

#### **Land Use:**

The subject site is developed with a multi-tenant commercial structure housing one nonconforming liquor store use and a vacant retail space (half of the structure is vacant). The areas to the north, south and east are developed with mixed uses; and the area to the west is developed with a public park.

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

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

#### **TIMELINE:**

- February 16, 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 9, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel C.
- February 12, 2021: The Board of Adjustment Senior Planner sent the record owner of the property (Madera Paan INC) and the tenant/operator of the use (Big D Town LLC) a letter (with a copy to Jill Haning and James Farrior) informing them that a Board of Adjustment case had been filed against the nonconforming liquor store use. The letter included following enclosures:
1. A copy of the Board of Adjustment application and related materials.
  2. Dallas Development Code Section 51A-3.102 describing the Board of Adjustment.
  3. Dallas Development Code Section 51A-2.102(90), which defines a nonconforming use.
  4. Dallas Development Code Section 51A-4.704, provisions for nonconforming uses and structures.
  5. Dallas Development Code Section 51A-4.703, Board of Adjustment hearing procedures.
  6. City of Dallas Board of Adjustment Working Rules of Procedures.
  7. The hearing procedures for Board of Adjustment amortization of a nonconforming use.
- The letter also informed the owners and tenant/operator of the date, time, and location of the public hearing, and provided a deadline of May 7, 2021 to submit any information that would be incorporated into the board's docket.
- April 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

May 6, 2021 The representative for the tenant/operator submitted a letter and documentary evidence to the board (minimum of 45 days from motion for continuance provided as **Attachment A**).

May 7, 2021 The representative for city council submitted a letter and documentary evidence to the board (**Attachment B**).

May 18, 2021 The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action per the business owner's request until the next public hearing to be held on June 21, 2021.

June 11, 2021 The representative for city council submitted a letter and documentary evidence to the board (**Attachment C**).

**BOARD OF ADJUSTMENT ACTION:** May 17, 2021

**APPEARING IN FAVOR:** Evan Farrior 1500 Marilla St. Dallas, TX  
Bernardo Bueno 320 E. Jefferson Dallas, TX  
Margarita Ortiz 11406 Fernald Ave. Dallas, TX  
Dr. Terry Flowers 1600 Pennsylvania Ave. Dallas, TX  
Jeremy Connally 1414 Belleview #1111 Dallas, TX  
Ferrell Fellows 1919 McKinney Ave. Dallas, TX  
Danielle Lindsey 5005 Galleria Rd. #3133 Dallas, TX  
Dennis Bryant 2818 MLK Jr. Blvd. Dallas, TX

**APPEARING IN OPPOSITION:** Rahim Noorani 8111 LBJ Fwy #480 Dallas, TX  
Tailim Song 8111 LBJ Fwy #480 Dallas, TX  
Chris Valentine 8111 LBJ Fwy #480 Dallas, TX  
Hank Lawson 12402 Park Ave. Dallas, TX

**MOTION:** Hounsel

I move that the Board of Adjustment in Appeal No. BDA 201-036, hold this case under advisement until June 21, 2021.

**SECONDED:** Sashington

**AYES:** 4 - Hounsel, Pollock, Agnich, Sashington

**NAYS:** 0 -

**MOTION PASSED (unanimously):** 4 – 0

**BOARD OF ADJUSTMENT ACTION:** June 21, 2021

**APPEARING FOR PUBLIC TESTIMONY:** Danielle Lindsey 5005 Galleria Rd #3133  
Dallas, TX  
Jeanette Fellows 10217 Shayna Dallas, TX  
Julie Saqueton 1600 Pennsylvania Ave. Dallas, TX  
Jeremy Connally 1414 Belleview St. #111 Dallas, TX  
Dennis Bryant P.O. Box 631477 Dallas, TX  
Ferrell Fellows 1919 McKinney Ave. Dallas, TX

**APPEARING IN FAVOR:** Evan Farrior 1500 Marilla St. Dallas, TX  
Bernardo Bueno 320 E. Jefferson Dallas, TX  
Margarita Ortiz 11406 Fernald Ave. Dallas, TX  
Dr. Terry Flowers 1600 Pennsylvania Ave. Dallas, TX

APPEARING IN OPPOSITION:

Rahim Noorani 2403 N. Fitzhugh Dallas, TX  
Tailim Song 8111 LBJ Fwy #480 Dallas, TX  
Chris Valentine 8111 LBJ Fwy #480 Dallas, TX

MOTION#1: Hounsel

I move that the Board of Adjustment in Appeal No. BDA 201-036, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties.

SECONDED: Sashington

AYES: 3 - Hounsel, Sashington, Medina

NAYS: 2 - Pollock, Agnich

MOTION FAILED 3 – 2

MOTION#2: Hounsel

I move that the Board of Adjustment in Appeal No. BDA 201-036, **deny** the applicant's request for expedited compliance **without** prejudice because based on the evidence and testimony presented at the public hearing, we find that continued operation of this nonconforming use will not have an adverse effect on nearby properties.

SECONDED: Sashington

AYES: 4 - Hounsel, Pollock, Agnich, Medina

NAYS: 1 - Sashington

MOTION PASSED: 4 – 1

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MOTION: Agnich

I move to adjourn the Panel C hearing.

SECONDED: Sashington

AYES: 5 - Agnich, Hounsel, Pollock, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 - 0

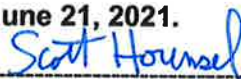
1<sup>st</sup> recess: 4:14 p.m.

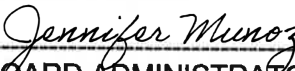
Resumed: 4:25 p.m.

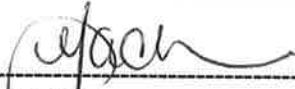
2<sup>nd</sup> recess: 6:12 p.m.

Resumed: 6:21 p.m.

The meeting was adjourned at 7:00 P.M. on June 21, 2021.

  
\_\_\_\_\_  
CHAIRPERSON

  
\_\_\_\_\_  
BOARD ADMINISTRATOR

  
\_\_\_\_\_  
BOARD SECRETARY

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**Note:** For detailed information on testimony, refer to the tape retained on file in the

Department of Planning and Development.