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CITY SECRETARY  
DALLAS, TEXAS

BOARD OF ADJUSTMENT

Panel A Minutes

February 21, 2023



6ES Briefing Room

[24923176153@dallascityhall.webex.com](mailto:24923176153@dallascityhall.webex.com)

David A. Neumann, Chairman

**PRESENT: [5]**

David A. Neumann, Chairman	
Kathleen F. Davis	
Rachel Hayden	
Lawrence Halcomb	
Jay Narey	

**ABSENT: [0]**


Chair Neumann called the briefing to order at **11:00 A.M.** with a quorum of the Board of Adjustment present.

Chair Neumann called the hearing to order at **1:45 P.M.** with a quorum of the Board of Adjustment present.

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.

**PUBLIC SPEAKERS**

The Board of Adjustment provided "public speaker" opportunities for individuals to comment on matters that were scheduled on the agenda or to present concerns or address issues that were not matters for consideration listed on the posted meeting agenda.

We had no speakers for public testimony during this hearing.

**MISCELLANEOUS ITEMS**

Approval of the Board of Adjustment Panel A January 17, 2023 public hearing minutes.

**Motion was made to approve Panel A January 17, 2023 public hearing minutes.**

Maker:	Rachel Hayden				
Second:	Jay Narey				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	-	0	

**CONSENT ITEMS**

- 5415 Yolanda Lane**  
BDA223-013(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Kirk Perrin for a special exception to the single-family use regulations at 5415 Yolanda Lane. This property is more fully described as Lot 15 Block D/5518 and is zoned an R-1ac(A) Single Family District, which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit, not for rent, which will require a special exception to the single-family zoning use regulations.

**LOCATION:** 5415 Yolanda Lane

**APPLICANT:** Kirk Perrin

**REQUEST:**

A request for a special exception to the single-family use regulations is made to construct and maintain a 623 square-foot additional dwelling unit structure located on top of the garage on a site being developed with a 13,450 square feet square two-story single-family dwelling unit.

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

Section 51-4.201(b)(1)(E)(i) of the Dallas Development Code specifies 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.

**Zoning:**

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

**Land Use:**

The subject site is undeveloped and the surrounding properties are developed for 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:**

This request for a special exception to the single-family use regulations focuses on constructing and maintaining a two-story additional dwelling unit structure on a site being developed with a two-story single-family dwelling unit.

The site is zoned an R-1ac(A) Single Family District where the Dallas Development Code permits one dwelling unit per lot.

The single-family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot and that the Board of Adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: (1) be use as rental accommodations; or (2) adversely affect neighboring properties.

The Dallas Development Code defines:

- a “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- a “kitchen” is “any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities.”

BOARD OF ADJUSTMENT  
February 21, 2023

- a “bathroom” as “any room used for personal hygiene and containing a shower or bathtub or containing a toilet and sink.”
- a “bedroom” is “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sunrooms, and other similar rooms are considered bedrooms.”

The submitted site plan identifies the location of two building footprints, the larger of the two denoted as “Proposed two story home,” which is the proposed single-family residential main structure. The additional dwelling unit is denoted as “Garage with Nanny Suite Above” the smallest of the two structures.

This request centers on the function of what is proposed to be inside the smaller structure on the site – the “Garage with Nanny Suite Above” structure, specifically its collection of rooms/features shown on the floor plan: the first floor includes a closet, a bathroom, a kitchen with dining and living area and a sleeping area next to the living area.

According to DCAD records, the “are no improvements” for the property at 5415 Yolanda Lane. According to the submitted site plan the proposed main structure contains 13,450 square feet of total living area and the proposed additional dwelling unit contains 623 square-feet of living area.

The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.

As of February 10, 2023, one letter has been submitted in support and and no letters in opposition to this request.

Granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e., development on the site must meet all required code requirements).

The Dallas Development Code states that 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.

**Timeline:**

- November 14, 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.
- January 16, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- January 18, 2023: 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 January 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and

BOARD OF ADJUSTMENT  
February 21, 2023

February 10, 2023, 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 24, 2023: 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 the Board of Adjustment Chief Planner/Board Administrator, The Development Services Chief Planner, Development Service Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Transportation Development Services Senior Engineer, Development Services Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

Speakers:

For: No Speakers

Against: No Speakers

**Motion**

I move that the Board of Adjustment, in Appeal No. BDA 223-013, **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 223-013**—Application of Kirk Perrin for a special exception to the single-family use regulations in the Dallas Development Code, is subject to the following conditions:

Compliance with the submitted site plan is required; and

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

Maker:	Kathleen Davis				
Second:	Jay Narey				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	-	0	

**2. 2027 Melbourne Avenue**  
BDA223-015(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Kristian B. Cole, represented by Lauren E. Compton, for a special exception to the single-family use regulations, and for a variance to the floor area for structures accessory to single family uses regulations at **2027 Melbourne Avenue**. This property is more fully described as Block 10/4764, Lot 1 and is zoned R-7.5(A), which limits the number of dwelling units to one, and in which an accessory structure may not exceed 25% of the floor area of the main structure. The applicant proposes to construct and/or maintain an additional dwelling unit, which will require a special exception to the single-family zoning use regulations, and to construct and/or maintain an accessory structure with 400 square feet of floor area (36% of the 1101 square foot floor area of the main structure), which will require a 125 square foot variance to floor area for structures accessory to single family uses regulations.

**LOCATION:** 2027 Melbourne Avenue

**APPLICANT:** Kristian Cole  
represented by Lauren Compton

**REQUEST:**

The following requests have been made on a site that is developed with a one-story main single-family home/dwelling unit structure:

1. A request for a special exception to the single-family use regulations is made to construct and maintain a non-rentable additional dwelling unit.
2. A request for a variance to construct and/or maintain the above additional dwelling unit with 400 square feet proposed floor area (36% of the 1101 square foot floor area of the main structure), which will require a 125 square foot variance to floor area for structures accessory to single family uses regulations.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AN ADDITIONAL DWELLING UNIT ON ONE LOT:**

(i). The board may grant a special exception to authorize a rentable additional dwelling unit in any district when, in the opinion of the board, the additional dwelling unit will not:

(aa) be used as rental accommodations; or

(bb) adversely affect neighboring properties.

(ii). In granting a special exception under this subparagraph, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

**STAFF RECOMMENDATION FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AN ADDITIONAL DWELLING UNIT ON ONE LOT:**

No staff recommendation is made on this or any request for a special exception to authorize an accessory dwelling unit since the basis for this type of appeal is *when in the opinion of the board*,

the standards described above are met.

**STANDARD FOR A VARIANCE:**

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

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

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

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

**STAFF RECOMMENDATION (Variance):**

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 R-7.5(A) considering its restrictive lot area of 7,100 square feet so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning classification.
- The applicant submitted a document (Attachment A) indicating that the proposed structure on the site is commensurate to 17 other lots located in the same zoning district.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the single family use regulations focus on maintaining an additional dwelling unit on a site developed with a one-story single-family home.
- The site R-7.5(A) Single Family District where the Dallas Development Code permits one dwelling unit per lot.
- 51-4.201(b)(1)(E)(i) of the Dallas Development Code specifies 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.
- The submitted site plan denotes the locations of two building footprints, the larger of the two is an existing single family structure and the smaller of the two is denoted as “proposed ADU”.
- This request centers on the function of what is proposed to be inside the smaller structure on the site – the “proposed ADU” structure, specifically its collection of rooms/features shown on



the floor plan.

- DCAD records indicate the following improvements for the property located at 2027 Melbourne Avenue: “main improvement: a structure with 1,101 square feet of living area built-in 1951” and “additional improvements: a 200-square-foot detached garage.
- The site plan denotes that the proposed 400-square-foot additional dwelling structure is equal to 36 percent of the existing 1,101-square-foot floor area of the main structure which will require a 125 square-foot variance to the floor area ratio of the main structure.
- The Dallas Development Code states that 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.
- If the Board were to grant this request, Building Inspection would view the structure denoted on the submitted site plan as “garage/residence” as an additional dwelling unit.

**GENERAL FACTS/STAFF ANALYSIS (Variance):**

- A request for a variance to construct and/or maintain the above additional dwelling unit with 400 square feet proposed floor area (36% of the 1101 square foot floor area of the main structure), which will require a 125 square foot variance to floor area for structures accessory to single family uses regulations.
- DCAD records indicate the following improvements for the property located at 2027 Melbourne Avenue: “main improvement: a structure with 1,101 square feet of living area built-in 1951” and “additional improvements: a 200-square-foot detached garage”.
- The site plan denotes that the proposed 400-square-foot additional dwelling structure is equal to 36 percent of the existing 1,101-square-foot floor area of the main structure which will require a 125 square-foot variance to the floor area ratio of the main structure.
- The property is rectangular, slightly sloped, and according to the application, contains 0.176 acres, or approximately 7,657 square feet in area. However, the lot is reduced to 7,100 square feet due to a 10-foot ally easement. In R-7.5(A) Single-Family District the minimum lot size is 7,500 square feet. Hence, the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
- The applicant has submitted a document comparing the lot sizes and improvement of the subject site with 17 other properties in the same zoning. The average lot is 9,460 square feet with about 1,660 square feet in improvements. The proposed 400-sqaure foot with an existing 1,101-square-foot structure on the site is commensurate to 17 other lots located within the same zoning district.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the floor area regulations for structures accessory to single-family uses will not be contrary to the public interest when owing to special conditions, a

BOARD OF ADJUSTMENT  
February 21, 2023

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

- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same zoning classification.
- If the board were to grant a variance to the floor area regulations for structures accessory to single-family uses and impose the submitted site plan as a condition, the building footprints of the structures on the site would be limited to what is shown on this document.

**Timeline:**

- December 1, 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.
- January 16, 2023: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- January 18, 2023: 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 January 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 10<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.
- January 23, 2023: The applicant submitted additional information to staff beyond what was submitted with the original application (Attachment A).
- January 24, 2023: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included the Development Services Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, The Development Services Chief Planner, Development Service Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Transportation Development Services Senior Engineer, Development Services Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

Speakers:

For: No Speakers

Against: No Speakers

**Motion**

I move that the Board of Adjustment, in Appeal No. BDA 223-015, **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 223-015**—Application of Kristian B. Cole, represented by Lauren E. Compton, for a special exception to the single-family use regulations, and for the variance to the floor area for structures accessory to single-family use regulations in the Dallas Development Code, is subject to the following conditions:

Compliance with the submitted site plan is required; and

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

Maker:	Kathleen Davis				
Second:	Jay Narey				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	-	0	

**3. 5550 Walnut Hill Lane**  
BDA223-019(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Gary Blum for special exceptions to the fence standards regulations, at 5550 Walnut Hill Lane. This property is more fully described as Block 4/5605, Lot 6 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet, and requires that a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and/or maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards regulations, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations.

**LOCATION:** 5550 Walnut Hill Lane

**APPLICANT:** Gary Blum

**REQUEST:**

The following requests have been made on a site that is being developed with a single-family home:

1. A request for a special exception to the fence standards regulations of 4' is made to construct and maintain a 6' high concrete fence, with 6'4" concrete columns and two 8' high wrought iron motorized swing gates in the required 40-foot front yard.
2. A request for a special exception to the fence standards regulations related to fence panels with a surface area that is less than 50 percent open and less than five feet from the front lot line is made to construct and maintain portions of 6' high concrete fence panels less than five feet from the front lot line.

**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 when, in the opinion of the board, the special exception will not adversely affect the neighboring property.

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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

1. BDA212-022: April 20, 2022, granted, your request to construct and/or maintain a nine-foot-six-inch-high fence as a special exception to the height requirement for fences and to construct and/or maintain fence panels with a surface area less than 50 percent open located less than five feet from the front lot lines as a

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

**GENERAL FACTS/STAFF ANALYSIS:**

- The following requests are made on a site developed with a single-family home:
1. A request for a special exception to the fence standards regulations of 4' is made to construct and maintain a 6' high concrete fence, with 6'4" concrete column and two 8' high wrought iron motorized swing gates in the required 40-foot front yard.
  2. A request for a special exception to the fence standards regulations related to fence panels with a surface area that is less than 50 percent open and less than five feet from the front lot line is made to construct and maintain the 6' high concrete fence panels less than five feet from the front lot line.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard. The subject site is zoned an R-1ac(A) Single Family District which requires a 40-foot front yard setback. The site has a 40' required front yard along Gaywood 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 4' above grade when located in the required front yard.
  - Additionally, the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five from the front lot line.
  - The following information is shown on the submitted site plan:
    - the proposal is represented as being approximately 115' in length fronting Walnut Hill Lane. The site plan shows the proposed concrete fence is located between between 2' 4" and 19' 8" from the property line along the street. Furthermore, the fence is proposed to be located 14' from the pavement line. Note that 41' of fence is located 2'4" from the property line along the street with fence panels with a surface area that is less than 50 percent open and less and located within the front yard setback.

BOARD OF ADJUSTMENT  
February 21, 2023

- Staff conducted a field visit of the site and surrounding area, approximately 1000 feet around the subject site, and noticed several other fences that appear to be above four feet in height and located in a front yard setback.
- As of February 10, 2023, 2 letters have been submitted in support and no letters in opposition to this request.
- With regard to the requests for special exceptions to the fence standards regulations, the applicant has the burden of proof in establishing that the special exceptions will not adversely affect the neighboring property.
- If the board was to grant these special exceptions with a condition imposed that the applicant complies with the submitted site plan and fence elevation, it would require the portions of the fences which exceed four feet in height in the front yard setbacks and the portions with fence panels with surface area that is less than 50 percent open and within five feet of the front lot line to be constructed and maintained in the locations and of the heights and materials as shown on these documents.

**Timeline:**

December 14, 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.

November 29, 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.

January 16, 2023: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

January 18, 2023: 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 January 23<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 10<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.

January 24, 2023: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included the Development Services Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, The Development Services Chief Planner, Development Service Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Transportation Development Services Senior Engineer, Development Services Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT  
February 21, 2023

February 7, 2023: The applicant submitted additional information to staff beyond what was submitted with the original application.

Speakers:

For: No Speakers

Against: No Speakers

**Motion**

I move that the Board of Adjustment, in Appeal No. BDA 223-019, **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 223-019**—Application of Gary Blum for a special exception to the fence height requirements and surface area openness requirements for fences in the Dallas Development Code, subject to the following condition(s):

Compliance with the submitted site plan is required.

Maker:	Kathleen Davis				
Second:	Jay Narey				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	-	0	

**INDIVIDUAL ITEMS**

- 3318 Knight Street**  
BDA223-014(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Thomas Sanden for a variance to the side yard setback regulations at 3318 Knight Street. This property is more fully described as Block B/1323, Lot 10A, and is zoned PD-193 subdistrict MF-2(A), which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a structure and provide a 1-foot side yard setback, which will require a 4-foot variance to the side yard setback regulations.

**LOCATION:** 3318 Knight Street

**APPLICANT:** Thomas Sanden

**REQUESTS:**

A request for a variance to the side yard setback regulations of 4 feet is made to remodel and

maintain a 3,658 square-foot two-story home part of which is to be located 1-foot from the site's alley side property line on a site that is currently developed with a single-family home.

**STANDARD FOR A SPECIAL VARIANCE:**

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

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

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

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

**STAFF RECOMMENDATION (side yard variance):**

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 Plan Development No. 193 subdistrict MF-2(A) given its restrictive area. Whereby that the lot cannot be developed in a



manner commensurate with the development upon other parcels of land with the same PD 193 subdistrict MF-2(A) zoning classification.

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

**Zoning:**

- Site:** Plan Development No. 193 subdistrict MF-2(A)
- North:** Plan Development No. 193 subdistrict MF-2(A)
- East:** Plan Development No. 193 subdistrict MF-2(A)
- South:** Plan Development No. 193 subdistrict MF-2(A)
- West:** Plan Development No. 193 subdistrict MF-2(A)

**Land Use:**

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

**Zoning/BDA History:**

There have been three zoning cases and no relevant board of adjustment cases recorded in the vicinity of the subject site within the last five years.

**Z212-109:** On November 15, 2022, The Board of Adjustment Panel A, at its public hearing held on Tuesday, November 15, 2022, denied your requests for a special exception to the single-family use regulations and variances to the floor area ratio regulations, the rear yard setback regulations, and the 2 side yard setback regulations without prejudice.

**Z167-149:** On July 21, 2016, City Council requested that the City Plan Commission authorize a public hearing to determine the proper zoning on property zoned MF-3 Multifamily District, Office Subdistrict, GR General Retail Subdistrict, and Plan Development Subdistrict Nos. 14, 20, 29, 82, 84, 92 and 97 within Planned Development District No 193 as well as Plan Development District No. 148 and Plan Development District No 374 to establish appropriate to establishing appropriate zoning regulations including use, development standards, and other appropriate regulations in an area generally bounded by Maple Avenue, Oak Lawn Avenue, Cedar Springs Road and Turtle Creek Boulevard. This was a hearing to consider the request to authorize the hearing and not the rezoning of property

**Z189-141:** On Wednesday, June 12, 2019, the City Council approved an ordinance changing the zoning classification from Planned Development Subdistrict No. 6 within Planned Development District No. 193 (Oak Lawn Special Purpose District) to Planned Development District No. 372 and amendment of Planned Development District No. 372 to reflect the expansion of the planned development district, on property zoned on property zoned Planned Development District No. 372 and Planned Development Subdistrict No. 6 within Planned Development District No. 193, the Oak Lawn Special Purpose District, on property generally bounded by McKinney Avenue to the east, Lemmon Avenue East to the north, Oak Grove Avenue to the west, and Lemmon Avenue to the south. According to staff report the purpose of the request was to allow for the redevelopment of a site with a mix of uses to include a large format specialty retail store with more than 100,000 square feet of floor area, office, hotel, and multifamily uses.

**GENERAL FACTS/STAFF ANALYSIS (side yard setback regulations):**

- The request for variance to the side yard setback regulations focus on remodeling and maintaining a 3,658 square-foot two-story home on a lot developed with a single-family home and zoned Plan Development No. 193 subdistrict MF-2(A), In this Plan Development No. 193 zoning district a minimum side yard setback of 5 feet is required.
- The submitted site plan indicates that the proposed remodeling for a total 3,561 square-foot two-story main single-family structure will be located one-foot from the southwest side property line due to a kitchen and a closet addition.
- The subject site is flat, virtually rectangular (approximately 50 feet by 150 feet), and according to the submitted site plan 7,500-square-foot in area. The site is zoned PD 193 subdistrict MF-2(A) where lots vary significantly in sizes but are traditional larger than 7,500-square feet.
- According to DCAD, the “main improvement” for the property addressed at 3318 Knight Street is a structure built in 1925 with 2,498 square feet of total/living area with the following “additional improvements”: 875 square foot detached quarters, an 875 square foot detached garage and a 140 square foot Porte cochere.
- The applicant submitted a document (**Attachment A**) indicating, among other things, that the proposed additions on the subject site are commensurate to 8 other lots located within the same PD 193 subdistrict MF-2(A). The applicant’s lot is 7,500 square feet in area, and it is proposing 3,561 square feet of total living area for all structures. The applicant provided a table with eight other properties. All eight lots are 2,000 square feet in area compared to other 7 properties’ building size over their lot size. However, all “Gilbert properties” are part of the same development as well as all “the knight properties” and Bowser Avenue. The applicant demonstrated that “The 3550, 3554, 3558 Knight Development” is 6,000 square feet in area and allows 6,507 square feet of total living area. “The Gilbert Avenue Development” is 8,000 square feet with 10,981 square feet of total living area. Furthermore, the applicant provided a list of these properties indicating these properties were all granted variances to setbacks regulations.
- 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 Plan Development No. 193 subdistrict MF-2(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 Plan Development No. 193 subdistrict MF-2(A) zoning classification.

BOARD OF ADJUSTMENT  
February 21, 2023

- If the board were to grant the variance request and impose the submitted site plan as a condition, the structure would be limited to what is shown on this document and impose the submitted site plan as a condition, the building footprints of the structures on the site would be limited to what is shown on this document.

**TIMELINE:**

- November 29, 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.
- January 16, 2023: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- January 18, 2023: 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 January 23<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 10<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.
- January 18, 2023: The applicant submitted additional information to staff beyond what was submitted with the original application.
- January 24, 2023: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included the Development Services Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, The Development Services Chief Planner, Development Service Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Transportation Development Services Senior Engineer, Development Services Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

Speakers:

For: Tom Sanden 3318 Knight Street, Dallas TX  
Tom Newbury, 3318 Knight Street, Dallas TX

Against: No Speakers

**Motion**

I move that the Board of Adjustment, in Appeal No. BDA 223-014, on application of Thomas Sanden, **grant** the request for the four-foot variance to the side yard setback regulations in the Dallas Development Code, subject to the following condition(s):

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.

BOARD OF ADJUSTMENT  
 February 21, 2023

Maker:	Jay Narey				
Second:	Kathleen Davis				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey and Lawrence Halcomb
		Against:	-	0	

**2. 1801 Mentor Avenue**  
 BDA223-018(ND)

**BUILDING OFFICIAL’S REPORT:** Application of Saro Di Frisco for a variance to the front yard setback regulations at 1801 Mentor Avenue. This property is more fully described as Block 29/4327, Lot 1, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct a one-story 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.

**LOCATION:** 1801 Mentor Avenue

**APPLICANT:** Saro Di Frisco

**REQUEST:**

A request for a variance to the front yard setback regulations of 10 feet is made to construct and/or maintain a one-story single family home structure with an approximately 1,600 square foot building footprint, part of which is to be located 15 feet from one of the site’s two front property lines (Fernwood Avenue) or 10 feet into this 25 foot front yard setback on a site that is 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:

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

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

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
  - (e) 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.
  - (f) 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.
  - (g) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirements.
  - (h) compliance would result in the unreasonable encroachment on an adjacent property or easement; or the municipality considers the structure to be a nonconforming structure.

**STAFF RECOMMENDATION (Front Yard Variance):**

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) zoning district in that it is restrictive in area due to having two, 25' front yard setbacks when most lots in this zoning district have one 25' front yard setback. The 9,700 square foot site has 20' of developable width available once a 25' front yard setback is accounted for on Fernwood Avenue and a 5' side yard setback is accounted for on the parallel yard. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that that the square footage of the proposed home on the subject site at approximately 1,600 square feet is commensurate to twenty-eight other homes in the same R-7.5(A) zoning district that have average home size of approximately 1,500 square feet.
- Staff concluded that granting the variance in this application would not be contrary to public interest in that the variance would allow a structure in one of the site's two front yard setbacks where the location of this structure would comply with the required 5' side yard setback if the Fernwood Avenue (longer street frontage) on this corner lot were able to be recognized at it is proposed to function as a side yard.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-7.5(A) (Single family district 9,700 square-feet)
- North: R-7.5(A) (Single family district 7,500 square-feet)
- South: R-7.5(A) (Single family district 7,500 square-feet)
- East: R-7.5(A) (Single family district 7,500 square-feet)
- West: R-7.5(A) (Single family district 7,500 square-feet)

**Land Use:**

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

**Zoning/BDA History:**

There is no BDA History found within the past five years.

**GENERAL FACTS /STAFF ANALYSIS:**

- This request for variance to the front yard setback regulations of 10 feet focuses on constructing and maintaining a one-story single family home structure with an approximately 1,600 square foot building footprint, part of which is to be located 15 feet from one of the site’s two front property lines (Fernwood Avenue) or 10 feet into this 25 foot front yard setback on an undeveloped site.
- The property is located in an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.
- The subject site is located at the southwest corner of Mentor Avenue and Fernwood Avenue. The subject site has 25’ front yard setbacks along both street frontages. The site has a 25’ front yard setback along Mentor Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25’ front yard setback along Fernwood Ave., the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5’ side yard setback is required. However, the site’s Fernwood Avenue. frontage that would function as a side yard on the property is treated as a front yard setback nonetheless, to maintain the continuity of the established front yard setback established by lots that front/are oriented northward towards Fernwood Avenue.
- The submitted site plan indicates that the proposed structure is located 15 feet from the Fernwood Ave. front property line or 10 feet into this 25’ front yard setback.
- According to DCAD records there are no improvements listed for property addressed at 1801 Mentor Avenue.
- The subject site is flat, rectangular in shape (194’ x 50’) and is 9,700 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The site plan represents that about 1/3 of the structure is located in the 25’ Fernwood Avenue front yard setback.
- The 50’ wide subject site has 20’ of developable width available once a 25’ front yard setback is accounted for on Fernwood Ave. and a 5’ side yard setback is accounted for on the parallel yard. If the lot were more typical to others in the zoning district with only one front yard setback, the 50’ wide site would have 40’ of developable width.

BOARD OF ADJUSTMENT  
February 21, 2023

- No variance would be necessary if the Fernwood Avenue frontage were a side yard since the site plan represents that the proposed home is 5' from the Fernwood Ave. property line and the side yard setback for properties zoned R-7.5(A) is 5'.
- A submitted floor plan represents that the "total under roof" area of the proposed home is about 1,60 square feet. The applicant has submitted a document indicating that the average square footage of twenty-eight other homes in R-7.5(A) is approximately 1,500 square feet.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 15 feet from the site's Fernwood Avenue front property line or (10 feet into this 25 foot front yard setback).

**Timeline:**

- December 14, 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.
- January 5, 2023: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 20, 2023: 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 23rd deadline to submit additional evidence for staff to factor into their analysis; and the February 10th 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 24, 2023: 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 Board of Adjustment Senior Planner, the Board of Adjustment Development Code Specialist, the Board of Adjustment Consultant, the Chief Arborist, Development Services Senior Engineers, and the Board Attorney.

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

Speakers: For: No Speakers  
Against: Dalphine Mitchell-Parrish 317 Valleyridge Dr. Red Oak TX  
Larry Mitchell 317 Valleyridge Dr. Red Oak, TX

**Motion**

I move that the Board of Adjustment, in Appeal No. BDA 223-018, on application Sario Di Frisco, **deny** the variance to the front yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

Maker:	Kathleen Davis			
Second:	Rachel Hayden			
Results:	5-0			
		Ayes:	- 5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey and Lawrence Halcomb
		Against:	- 0	

**HOLDOVER ITEMS**

**3. 10240 Gaywood Road**  
BDA223-006(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Trenton Robertson for a special exception to the fence standards regulations and a special exception to the visual obstruction regulations at 10240 Gaywood Road. This property is more fully described as block G/5517, Lot 3D and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet, requires that 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, and requires a 20 foot visibility triangle at driveways. The applicant proposes to construct and/or maintain a 6 foot high fence in a required front yard, which will require a 2 foot special exception to the fence standards regulations, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations, and to locate and maintain items in a required 20 foot visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 10240 Gaywood Road

**APPLICANT:** Trenton Robertson



**REQUESTS:**

The following requests have been made on a site that is being developed with a single-family home:

- 3. A request for a special exception to the fence standards regulations of 2' is made to construct and maintain a 6' high limestone fence, a 6' high steel picket pedestrian gate, and two 6' high sliding steel picket gates in the required 40-foot front yard on Gaywood Road.
- 4. A request for a special exception to the fence standards regulations related to fence panels with a surface area that is less than 50 percent open and less than five feet from the front lot line is made to construct and maintain the 6' high limestone panel fence with 6' high steel picket pedestrian gate, and two 6' tall sliding steel picket gates less than five feet from the front lot line.
- 5. A request for a special exception to the visual obstruction regulations is made to locate and maintain portions of a 6' high solid limestone fence and portions of two metal gates located in the four, 20' visibility triangles at the driveway approach into the site from Gaywood Road.

**UPDATE (2-23-23):**

On January 7, 2023, the Board of Adjustment Panel A held this case to the February 21, 2023, public hearing date. On February 9, 2023, the applicant submitted a revised site plan and elevations. The applicant modified the fence location at the driveway approaches to comply with the visual obstruction regulations. Hence, this application no longer needs a special exception to the visual obstruction regulations.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS (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 when, in the opinion of the board, the special exception will not adversely affect the neighboring property.

**STAFF RECOMMENDATION (fence standards regulations):**

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 (visual obstruction regulations):**

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 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 requests and has no objections.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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

1. **BDA223-011:** On January 18, 2023, The Board of Adjustment Panel B will hear a request for a special exception to the fence height regulations at 10227 Gaywood Road, the property to the north of the subject site.
2. **BDA212-113:** On December 12, 2022, Panel C granted a request for an 8’ special exception to the fence height regulations at 10203 Hollow Way Road.
3. **BDA212-082:** On September 19, 2022, Panel C denied without prejudice an eight-foot special exception to the fence height regulations at 10203 Hollow Way Road.
4. **BDA212-022:** On April 20, 2022, Panel B granted a special exception to the height requirement for fences a special exception to the surface area openness requirement subject to compliance with the submitted site plan, and elevation is required at 10007 Hollow Way Rd.
5. **BDA212-033:** On April 20, 2022, Panel B granted a special exception to the height requirement for fences a special exception to the surface area openness requirement subject to compliance with the submitted site plan, and elevation is required at 10007 Hollow Way Rd.
6. **BDA212-089:** On October 20, 2021, Panel B, Board of Adjustment granted a request for a special exception to the fence regulations, a special exception to the fence standards regulations, and two special exceptions to the visual obstruction regulations at 9646 Douglas Avenue.

**GENERAL FACTS/STAFF ANALYSIS:**

The following requests are made on a site developed with a single-family home:

1. A request for a special exception to the fence standards regulations of 2’ is made to construct and maintain a 6’ high limestone fence, a 6’ high steel picket pedestrian gate, and two 6’ high sliding steel picket gates in the required 40-foot front yard on Gaywood Road.

BOARD OF ADJUSTMENT  
February 21, 2023

2. A request for a special exception to the fence standards regulations related to fence panels with a surface area that is less than 50 percent open and less than five feet from the front lot line is made to construct and maintain the 6' high limestone panel fence with 6' high steel picket pedestrian gate, and two 6' tall sliding steel picket gates less than five feet from the front lot line.
3. A request for a special exception to the visual obstruction regulations is made to locate and maintain portions of a 6' high solid limestone fence and portions of two metal gates located in the four, 20' visibility triangles at the driveway approach into the site from Gaywood Road.

The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard. The subject site is zoned an R-1ac(A) Single Family District which requires a 40-foot front yard setback. The site has a 40' required front yard along Gaywood 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 4' above grade when located in the required front yard.

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

The following information is shown on the submitted site plan:

- the proposal is represented as being approximately 387' in length fronting Gaywood Road. The site plan shows the proposed limestone fence zigzags between the property line and 5' into the property line along the street. The fence extends 40' perpendicular to Gaywood Road on the east and west side of the site. Furthermore, the fence is proposed to be located 13' from the pavement line.

Staff conducted a field visit of the site and surrounding area, approximately 1000 feet around the subject site, and noticed several other fences that appear to be above four feet in height and located in a front yard setback.

As of January 6, 2022, 30 letters have been submitted in support and no letters in opposition to this request.

With regard to the requests for special exceptions to the fence standards regulations, the applicant has the burden of proof in establishing that the special exceptions will not adversely affect the neighboring property.

Additionally, Section 51A-4.602(d) of the Dallas Development Code states the following: 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 noted on the site plan, the proposed fence would obstruct:

BOARD OF ADJUSTMENT  
February 21, 2023

- Portions of a 6' solid limestone fence and portions of two metal gates located with the 4, 20-foot visibility triangles at the driveway approach into the site from Gaywood Road.

The Sustainable Development Department Senior Engineer has no objections to the requests.

With regard to the requests for special exceptions to the visual obstruction regulations, the applicant has the burden of proof to establish how granting these requests to locate and maintain the fence and gates in the two 20' visibility triangles on either side of the driveways does not constitute traffic hazards.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items in the two 20-foot visibility triangles on the west and east sides of the driveways into the site from Gaywood Road to that what is shown on these documents.

**Timeline:**

- November 1, 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.
- December 8, 2022: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- December 14, 2022: 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 December 23, 2022, deadline to submit additional evidence for staff to factor into their analysis; and January 6, 2023, 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.
- December 23, 2022: The applicant provided additional evidence.
- December 23, 2022: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Development Services Chief Planner, the Assistant City Attorney to the Board, and the Senior Planner.
- December 27, 2022: The Sustainable Development Department Senior Engineer has no objections to the requests.
- December 13, 2022: The Senior Planner wrote the applicant a letter of the board's action to hold this meeting to the February 21, 2023, public hearing; the January 23, 2023's deadline to submit additional evidence for staff to factor into their analysis; and the February 10th deadline to submit additional evidence to be

BOARD OF ADJUSTMENT  
February 21, 2023

incorporated into the Board’s docket materials.

January 24, 2023: 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 Board of Adjustment Chief Planner/Board Administrator, The Development Services Chief Planner, Development Service Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Transportation Development Services Senior Engineer, Development Services Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

February 9, 2023: The applicant submitted a revised fence elevation drawing to staff with new materials for the fence.

Speakers: For: Trenton Robertson 2201 Main Street, Dallas TX  
Against: No Speakers

**Motion #1**

I move that the Board of Adjustment, in Appeal No. BDA 223-006, on application of Trenton Robertson, **GRANT** the request of this applicant to construct and/or maintain a six-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 revised submitted site plan and elevation is required.

Maker:	Rachel Hayden				
Second:	Lawrence Halcomb				
Results:	5-0				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	-	0	

**Motion #2**

I move that the Board of Adjustment, in Appeal No. BDA 223-006, on application of Trenton Robertson, **GRANT** the request of this applicant to construct and/or maintain a fence with panel having less than 50 percent open surface area located less than five feet from the front lot line as a special exception to the surface area openness requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

BOARD OF ADJUSTMENT  
February 21, 2023

Maker:	Rachel Hayden			
Second:	Jay Narey			
Results:	5-0			
		Ayes:	- 5	David A. Neumann, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	- 0	

**Motion #3**

I move that the Board of Adjustment, in Appeal No. BDA 223-006, on application of Trenton Robertson, **DENY** the special exception requested by this applicant to maintain items in the visibility triangle at the drive approach **with** prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

Maker:	David A. Newman			
Second:	Rachel Hayden			
Results:	5-0 unanimously			
		Ayes:	- 5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, Kathleen Davis and Lawrence Halcomb
		Against:	- 0	

**ADJOURNMENT**

After all business of the Board of Adjustment had been considered, Chair Neumann moved to adjourn the meeting at 3:29 p.m.

Mary Williams

3-21-23

Required Signature:  
Mary Williams, Board Secretary  
Development Services Dept.

Date

Sheniqua Dunn

3-21-23

Required Signature:  
Nikki Dunn, Chief Planner/Board Administrator  
Development Services Dept.

Date

David A. Neumann

3/21/23

Required Signature:  
David A. Neumann, Chairman  
Board of Adjustment

Date