



BOARD OF ADJUSTMENT

Panel A Minutes

June 20, 2023

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CITY SECRETARY
DALLAS, TEXAS

6EN Council Chambers
24923176153@dallascityhall.webex.com

David A. Neumann, Chairman

PRESENT: [5]

David A. Neumann, Chairman	
Kathleen Davis	
Lawrence Halcomb	
Andrew Finney	
Philip Sahuc	

ABSENT: [0]

Rachel Hayden	
Jay Narey	

Assistant City Attorney Daniel Moore called the briefing to order at **10:33 A.M.** with a quorum of the Board of Adjustment present.

It was proposed by Assistant City Attorney Daniel Moore to elect a Temporary Presiding Officer for the briefing. Ms. Kathleen Davis made a motion to elect Lawrence Halcomb as a temporary presiding officer, second by Andrew Finney. **Motion was approved 4-0.**

Chair Neumann called the hearing to order at **1:00 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

1- Approval of the Board of Adjustment Panel A, May 16, 2023 public hearing minutes.

Motion was made to approve Panel A, May 16, 2023 public hearing minutes.

Maker:	Kathleen Davis				
Second:	Andrew Finney				
Results:	5-0 unanimously				Approved
		Ayes:	-	5	David A. Neumann, Phil Sahuc, Kathleen Davis, Andrew Finney, and Lawrence Halcomb
		Against:	-	0	

2- Two-Year Limitation Waiver – BDA201-090 – **8627 Lakemont Drive**

REQUEST: To waive the two-year limitation on a final decision reached by Board of Adjustment Panel A on October 19, 2021 - a request for special exceptions to the fence height and fence standards regulations contained in the Dallas Development Code, subject to the condition of compliance with the submitted site plan and elevation is required.

LOCATION: 8627 Lakemont Drive

APPLICANT: Audra Buckley

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:

The Dallas Development Code states that the board may waive the two-year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS/TIMELINE:

Two-year limitation.

(1) Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.

(2) If the board renders a final decision of denial without prejudice, the two-year limitation is waived.

(3) The applicant may apply for a waiver of the two-year limitation in the following manner:

(A) The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.

(B) The board may waive the two-year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in this section. (Ord. Nos. 19455; 20926; 22254; 22389; 22605; 25047; 27892; 28073)

October 19, 2021: The Board of Adjustment Panel A granted a request for special exceptions to the

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fence height and fence standards regulations contained in the Dallas Development Code subject to the condition of compliance with the submitted site plan and elevation. See Attachment A Decision Letter.

April 26, 2023: Applicant for BDA201-090 submitted an email to Board of Adjustment staff inquiring about the submittal process for a two-year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing. This email cited an extenuating circumstance of finances that did not allow the applicant to follow through with the permitting process. See Attachment A Inquiry to Waive Two-Year Limitation.

May 5, 2023: Applicant for BDA201-090 submitted a letter to Board Administrator to schedule for Board’s consideration, a request to waive the two- year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing. This letter disclosed that the applicant desires to resubmit to the Board because of non-compliance with the requirement of SEC. 51A-4.703 (d) (6) which states that applicant shall file an application for a building permit or certificate of occupancy within 180 days from the date of favorable action of the Board. In addition, the property owner alerted the Board that the resubmittal will include some minor changes to the previous site plan. The two-year waiver is sought so that the Board may consider applicant’s request for a revised fence design on site plan. The two-year waiver request is made in order for the applicant to file a new application for special exceptions to the fence height and fence standards regulations contained in the Dallas Development Code given that the applicant proposes a revised site plan that would no longer comply with the conditions imposed with granted request of October 2021. See Attachment B Request to Waive Two-Year Time Limitation.

May 30, 2023: Development Code Specialist emailed the applicant information regarding the miscellaneous item request with a hearing date of June 20, 2023, Panel A.

Speakers:

For: Audra Buckley, 1414 Belleview St #150, Dallas TX 75215

Against: No Speakers

Motion

I move that the Board of Adjustment, in request No. BDA 201-091, on application of Audra Buckley, to **GRANT** the request of this applicant to waive the two-year limitation on a final decision reached by Board of Adjustment Panel A on October 20, 2021, because there are changed circumstances regarding the property sufficient to warrant a new hearing.

Maker:	Kathleen Davis				
Second:	Phil Sahuc				
Results:	5-0 unanimously				Approved to Grant
		Ayes:	-	5	David A. Neumann, Phil Sahuc, Kathleen Davis, Andrew Finney, and Lawrence Halcomb
		Against:	-	0	

CONSENT ITEMS

1. 6821 McCallum Blvd.
BDA223-048(KMH)

BUILDING OFFICIAL'S REPORT Application of Alan Tolmas for a special exception to the fence regulations at 6821 McCallum Blvd. This property is more fully described as Block J/8727, Lots 76 & 77 and is zoned PD-106 which limits the height of a fence in the front yard to 4-feet. The applicant proposes to construct/maintain a 6-foot 2-inch high fence in a required front yard, which will require a 2-foot 2-inch special exception to the fence regulations.

LOCATION: 6821 McCallum Blvd

APPLICANT: Alan Tolmas

REQUEST:

A request for a special exception to the fence regulations for 2-foot 2-inches is made to construct/maintain a 6-foot 2-inch open picket-fence in the required front yard on a site developed with a congregational facility.

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 regulations 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 regulations 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: PD-106 (Single Family District)
North: PD-106 (Single Family District)
East: SUP
South: R-7.5 (A) (Single Family District)
West: PD-106 (Single Family District)

Land Use:

The subject site is developed with a congregational facility. The areas to the north, south, and west are developed with single-family uses, the area to the immediate east is developed as a Police Substation.

BDA History:

No BDA history in the last five years.

GENERAL FACTS/STAFF ANALYSIS:

- The purpose of this request for a special exception to the fence regulations of 2' 2" focuses on constructing and maintaining a 6' 2" high open picket fence in the required front yard on a site developed with a congregational facility.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.
- The subject site is zoned PD-106, which requires utilization of lots within this district to comply with the development standards of the R-10 Single Family District.
- As gleaned from the submitted site plan and application materials, the proposed fence will be located 152' along the front yard of McCallum Blvd.
- The applicant has the burden of proof in establishing that the special exception to the fence regulations will not adversely affect the neighboring property.
- If the Board were to grant this special exception request and impose a condition that the applicant complies with the submitted site plan/elevation, the proposal over 4' in height in the front yard setback would be limited to that what is shown on this document.

Timeline:

- March 31, 2023: 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 24, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- April 27, 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 May 26, 2023, deadline to submit additional evidence for staff to factor into their analysis; and June 9, 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.
- May 31, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

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Speakers:

For: Alan Tolmas, 6009 Oakcrest Rd, Dallas TX 75248 (Did not speak)

Against: No Speakers

Motion

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

BDA223-048— Application of Alan Tolmas for a special exception to the fence height requirements in the Dallas development code is **granted** subject to the following condition:

- Compliance with the submitted site plan/elevation is required.
- Compliance with the submitted alternate landscape plan is required (motion to remove)

Maker:	Lawrence Halcomb				
Second:	Andrew Finney				
Results:	5-0 unanimously				Approved to Grant
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Phil Sahuc, Andrew Finney, and Lawrence Halcomb
		Against:	-	0	

2. 4148 Gentry Drive

***This case was moved to Individual Items**

BDA223-056(KMH)

BUILDING OFFICIAL’S REPORT: Application of Alma Gutierrez for a special exception to the visual obstruction regulations at 4148 Gentry Drive. This property is more fully described as Block 4/7155, Lot 1 and is zoned R-5(A), which requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain a single-family residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visual obstruction regulation.

LOCATION: 4148 Gentry Drive

APPLICANT: Alma Gutierrez

REQUESTS:

A request for a special exception to the visual obstruction regulations to construct and/or maintain a single-family residential fence structure in a required visibility obstruction triangle.

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.

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 considers the structure to be a nonconforming structure.

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 item will not constitute a traffic hazard.

The Transportation Development Services Senior Engineer has no objections to the request for the obstructions to visibility triangle encroachment.

BACKGROUND INFORMATION:

Zoning:

Site: R-5(A) (Single Family District)
North: R-5(A) (Single Family District)
East: R-5(A) (Single Family District)
South: R-5(A) (Single Family District)
West: R-5(A) (Single Family District)

Land Use:

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

BDA History:

No BDA history within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the visual obstruction regulations focuses on maintaining a residential fence structure in a required visibility obstruction triangle.
- The site is zoned R-5(A), where the Dallas Development Code requires a 20-foot visibility triangle at driveway approaches. 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).
- The applicant proposes to maintain an existing 8-foot high wooden residential fence, where roughly 10 linear feet of the fence is located within the two 20-foot visibility triangles on both sides of the existing driveway along Canada Drive.
- The Transportation Development Services Senior Engineer has no objections to the request for the obstructions to visibility triangle encroachment.
- With regard to the request for a special exception to the visual obstruction regulations, the applicant has the burden of proof to establish how granting these requests to maintain the existing fence in the two 20-foot visibility triangles on either side of the driveway does not constitute a traffic hazard.
- Granting this request for a special exception to the visual obstruction regulations with a condition imposed that the applicant complies with the submitted site plan would limit the existing fence in the two 20-foot visibility triangles at driveway into the site from Canada Drive to what is shown on these documents.

Timeline:

- April 7, 2023: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.
- April 24, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- April 28, 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 May 26, 2023, deadline to submit additional evidence for staff to factor into their analysis; and June 9, 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

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- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 31, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

June 2, 2023: The Transportation Development Services Senior Engineer submitted a comment sheet. The Transportation Development Services Senior Engineer reviewed the requests and has no objection.

Speakers:

For: Alma Gutierrez, 4148 Gentry Drive, Dallas TX 75212
Interpreter: Jody DeLeon, 114 Donation Dr, Tioga TX 76271

Against: No Speakers

Motion #1

I move that the Board of Adjustment, in Appeal No. BDA 223-056, on application of Alma Gutierrez, **GRANT** the request to maintain items in the 20-foot visibility triangle at the drive approach, as requested by this applicant, as a special exception to the visual obstruction regulations 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.

Maker:	Lawrence Halcomb					Motion Fails for lack of a second
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Motion #2

I move that the Board of Adjustment, in Appeal No. BDA 223-056, on application of Alma Gutierrez, **DENY** the special exception requested by this applicant to maintain items in the visibility triangle at the drive approach **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

Maker:	Kathleen Davis					
Second:	Andrew Finney					
Results:	4-1					Approved to Deny
		Ayes:	-		4	David A. Neumann, Kathleen Davis, Phil Sahuc, Andrew Finney
		Against:	-		1	Lawrence Halcomb

3. 4523 Frankford Road

***This case was moved to Individual Items**
BDA223-050(KMH)

BUILDING OFFICIAL'S REPORT: Application of Chic-Fil-A, represented by Amanda Bishop, for a special exception to the landscape regulations at 4523 Frankford Road. This property is more fully described as Lot 1, Block P/8763, and is zoned CR, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 4523 Frankford Road

APPLICANT: Chic-Fil-A
Represented by Amanda Bishop

REQUEST:

A request for a special exception to the landscape regulations.

The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

To better explain, the applicant is providing an additional drive thru lane which requires additional paving to accommodate the existing structure; the additional paving is triggering the required landscape provisions.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

Section 51A-10.110 of the Dallas Development Code states the board may grant a special exception to the requirements of this article upon making a special finding from the evidence presented that strict compliance with the requirements of this article will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. In determining whether to grant a special exception under Subsection (a), the board shall consider the following factors:

- The extent to which there is residential adjacency.
- The topography of the site.
- The extent to which landscaping exists for which no credit is given under this article.
- The extent to which other existing or proposed amenities will compensate for the reduction of landscaping. (Ord. Nos. 22053; 25155)

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the landscape regulations 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: CR
North: CR

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East: CR
South: CR; TH-1(A)
West: PD-254; R-7.5A

Land Use:

The subject site is developed with a Chic-fil-a restaurant with. The areas to the north, west, east, and south are developed with community retail uses, some residential development as well as a fire station to the immediate west.

BDA History:

No BDA History in the last five years.

GENERAL FACTS /STAFF ANALYSIS:

- The subject site is zoned Community Retail (CR) and is currently developed with a Chic-fil-a restaurant.
- The purpose of this request for a special exception to the landscape regulations of Article X focuses on providing an alternate landscape plan.
- Due to traffic circulation and congestion on the subject site, the applicant has proposed site modifications which includes a dual drive thru lane, which expands the existing paving.
- The proposed modification triggers the landscape regulations of Article X. Therefore, the applicant is requesting a special exception to the landscape regulations to provide an alternate landscape plan.
- The applicant has the burden of proof in establishing that the special exception to the landscape regulations will not adversely affect the neighboring property.
- If the Board were to grant this special exception request and impose a condition that the applicant complies with the submitted site plan/elevation, the proposal of the alternate landscape plan would be limited to that what is shown on this document.

Timeline:

- April 6, 2023: 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 24, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- April 28, 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 May 26, 2023, deadline to submit additional evidence for staff to factor into their analysis; and the June 9, 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.

March 31, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

Speakers:

For: Nancy Carreras, 220 E. Central Parkway, Altamonte Springs, FL

Against: No Speakers

Staff: Phil Erwin, Arborist, Development Services

Motion #1

I move that the Board of Adjustment, in Appeal No. BDA 223-050, on application of Chick-Fil-A, represented by Amanda Bishop, **DENY** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that strict compliance with the requirements of Article X will not unreasonably burden the use of the property (and/or) the special exception will adversely affect neighboring properties.

Maker:	David Neumann			
Second:	Phil Sahuc			

Motion #2

Applicant available
Motion **WITHDRAWN**

Motion #3

I move that the Board of Adjustment, in Appeal No. BDA 223-050, on application of Chick-Fil-A, represented by Amanda Bishop, **DENY** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that strict compliance with the requirements of Article X will not unreasonably burden the use of the property (and/or) the special exception will adversely affect neighboring properties.

Maker:	Kathleen Davis			
Second:	Phil Sahuc			
Results:	5-0 unanimously			Approved to Deny
	Ayes:	-	5	David A. Neumann, Kathleen Davis, Phil Sahuc, Andrew Finney, and Lawrence Halcomb
	Against:	-	0	

4. 6446 E. Lovers Lane

*This case was moved to Individual Items
BDA223-054(KMH)

BUILDING OFFICIAL'S REPORT: Application of Jacob Remington for a variance to the off-street parking regulations at 6446 E. Lovers Lane. This property is more fully described as Block 9/5419, Lot 19 and is zoned R-7.5(A), which requires a parking space must be at least 20-feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a single-family residential accessory structure with a setback of 7-feet 4-inches, which will require a variance of 12-feet 8-inches to the off-street parking regulations.

LOCATION: 6446 E. Lovers Lane

APPLICANT: Jacob Remington

REQUESTS:

A request for a variance to the off-street parking regulations to construct a single-family residential structure with a setback of 7-feet 4-inches, which will require a variance of 12- feet 8-inches to the off-street parking regulations.

STANDARD FOR A VARIANCE:

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

- (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:
 - (f) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code.

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- (g) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur.
- (h) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement.
- (i) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (j) the municipality considers the structure to be a nonconforming structure.

STAFF RECOMMENDATION: ENGINEER OPINION

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that granting the variance would not be contrary to public interest as there is one other rear entry property within the vicinity of the subject site.
- Staff concluded that the proposed detached garage on the subject site is commensurate with other lots having secondary structures within the same PD zoning district.
- The Transportation Development Services Senior Engineer reviewed the submitted request and applicable documents and found no objection to the variance request.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single Family Residential District)
North: Plan Development District No 652
East: SUP
South: R-7.5(A) (Single Family Residential District)
West: R-7.5(A) (Single Family Residential District)

Land Use:

The subject site is developed with a single-family home. Properties to the east, west and south are also developed with single family homes. The property to the immediate north is developed with a school.

BDA History:

No BDA history within the last five years.

GENERAL FACTS/STAFF ANALYSIS

- The subject site is zoned R-7.5(A) and is currently developed with a single-family home.
- This request is for a variance to the off-street parking regulations which requires a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.

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- The applicant is proposing to construct a detached two car/rear entry garage that will be 7-feet 4-inches from the right-of-way line adjacent to the alley, which will require a 12-foot 8-inch variance to the off-street parking regulation.
- The applicant states that the request has been made to provide adequate parking accommodations to the property that is consistent with the neighborhood because the current configuration of the existing improvements does not allow for the 20-foot distance required by the city.
- According to the submitted site plan, the proposed structure will be approximately 484 square feet with a lot size of approximately 9,890 square feet.

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

- That granting the variance to the parking 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 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
- 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 a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

Speakers:

For: Jacob Remington, 6446 E. Lovers Lane, Dallas, TX 75214

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-054, on application of Jacob Remington, **GRANT** the 12-foot eight-inch variance to the off-street parking 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.

BDA223-054— Application of Jacob Remington for the 12-foot eight-inch variance to the off-street parking regulations in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

Maker:	Andrew Finney				
Second:	Phil Sahuc				
Results:	4-1				Approved to Grant
		Ayes:	-	4	David A. Neumann, Lawrence Halcomb,

					Phil Sahuc, Andrew Finney
		Against:	-	1	Kathleen Davis

5. 1020 McBroom Street

***This case was moved to Individual Items**
BDA223-061(KMH)

BUILDING OFFICIAL’S REPORT: Application of Brent Jackson for a variance to the side yard setback regulations at 1020 McBroom Street. This property is more fully described as Block A/7104, Lot 1, and is zoned R-5(A), which requires a side yard setback of 5 feet. The applicant proposes to maintain a single-family residential structure and provide a 0-side yard setback, which will require a 5-foot variance to the side yard setback regulations.

LOCATION: 1020 McBroom Street

APPLICANT: Brent Jackson

REQUEST:

A request for a variance to the side yard setback regulations of 0 feet is made to maintain a single-family home. The applicant is proposing to maintain a single-family residential structure and provide a 0-foot side yard setback, which will require a 5-foot variance to the side yard setback regulations.

STANDARD FOR A VARIANCE:

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

- (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 considers the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that 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 side yard setbacks where the location of this structure would comply with the required 5 foot side yard setback if Winnetka on this corner lot did not have a street easement.
- Staff concluded that the subject site is unique and different from most lots in R-5(A) zoning district in that it is restrictive in area due to having a street easement in the side yard setback on Winnetka.

ZONING/BDA HISTORY:

BDA223-035- April 21, 2023

Zoning:

<u>Site:</u>	R-5(A)
<u>North:</u>	R-5(A)
<u>South:</u>	R-5(A)
<u>East:</u>	R-5(A)
<u>West:</u>	R-5(A)

Land Use:

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

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the side yard setback regulations of 0 feet is made to maintain a single-family home.
- On December 13, 2021, Oaxaca Construction LLC applied for a new construction permit for a single-family residential structure. The permit was issued on February 10, 2022.
- The single-family home as constructed lies within the 5-foot required side yard setback.
- It appears that the home was not built-in compliance to the submitted site plans as the home appears to be also encroaching into the ROW to the west of the property. (Lloyd stated that the home is encroaching into the ROW- was determined during his site visit.)
 - This site is a request for a variance to the side yard setback regulations of 0 feet is made to maintain a single-family home. The applicant is proposing to maintain a single-family residential structure and provide a 0-foot side yard setback, which will require a 5-foot variance to the side yard setback regulations.
 - The site has a 5-foot street easement of which serves to be the line of which the setback is measured versus the property line.
 - If this site's side yard did not have a street easement side yard setbacks would be compliant on this site.
- The applicant has the burden of proof in establishing the following:
 - That permitting such a variance of the front yard where the literal enforcement of the provision of this article would result in an unnecessary hardship and where such variance is necessary to permit a specific parcel of land which differs from other parcels of land in the same PD 98 district by being of such restricted area, shape, or slopes that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same PD 98 district.
 - A modification of standards established by this article may not be granted to relieve a self-created or personal hardship, not for financial reason only, nor may such modification be granted to permit any person a privilege in developing a parcel of land not permitted by this article to other parcels of land in this district.
- 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 this document- which in this case is a home structure that would be located 0 feet from the site's side yard easement line (N. Winnetka) or 5 feet into this property's easement set line.

Timeline:

- May 1, 2023: 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 16, 2023: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- May 16, 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

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- 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 25, 2023: The applicant provided documentary evidence to staff.

May 31, 2023: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June 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, Code Compliance and the Board Attorney.

Speakers:

For: Sam Malik, 2323 Victory Ave # 700, Dallas TX 75219
Aimee Furness, 2323 Victory Ave # 700, Dallas TX 75219

Against: No Speakers

Staff: David Nevarez, Sr. Engineer, Development Services

Motion

move that the Board of Adjustment, in Appeal No. BDA 223-061, on application of Brent Jackson represented by Aimee Furness, **GRANT** the five-foot variance to the side 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.

BDA223-061— Application of Brent Jackson for the five-foot variance to the side yard setback regulation in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan and elevation is required.

Maker:	Lawrence Halcomb				
Second:	Phil Sahuc				
Results:	4-1				Approved to Grant
		Ayes:	-	4	David A. Neumann, Kathleen Davis, Phil Sahuc and Lawrence Halcomb
		Against:	-	1	Andrew Finney

INDIVIDUAL CASES

6. 7915 Roundrock Rd.
BDA223-052(KMH)

BUILDING OFFICIAL’S REPORT: Application of Emmy Alvarez Zumwalt for a special exception to the single-family use regulations at 7915 Roundrock Rd. This property is more fully described as Block 13/8187, Lot 2 and is zoned R-7.5(A), 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 use regulations.

LOCATION: 7915 Roundrock Rd.

APPLICANT: Emmy Alvarez Zumwalt

REQUEST:

A request for a special exception to the single-family use regulations is made to construct and maintain an additional dwelling unit, not for rent, on a site developed with a single-family home.

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.

BACKGROUND INFORMATION

Zoning:

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

Land Use:

The subject site and surrounding properties are developed with single-family homes.

BDA History:

No BDA history 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 an approximately 648 square feet additional dwelling unit, not for rent, on a site developed with a single-family home.
- The site is zoned an R-7.5(A) Single Family District where the Dallas Development Code permits one dwelling unit per lot.
- The proposed additional dwelling unit consists of a bedroom, bathroom, and kitchen.
- 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.”
 - 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 floor plan identifies the proposed layout of the additional dwelling unit which indicates a kitchen, a bedroom, and bathroom.
- 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.

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:

April 6, 2023: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

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- April 24, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- April 28, 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 **May 26, 2023**, deadline to submit additional evidence for staff to factor into their analysis; and June 9, 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.
- May 25, 2023: The applicant provided the Senior Planner with pictures of backyard as documentary evidence.
- May 31, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.
- June 1, 2023: The applicant provided the Senior Planner with pictures of a neighboring property as documentary evidence.

Speakers:

For: Emmy Zumwalt, 7915 Roundrock Rd, Dallas, TX 75248

Against: No Speakers

Motion

I move that the Board of Adjustment, in request No. BDA 223-052, on application of Emmy Zumwalt, **GRANT** the request to construct and maintain an additional dwelling unit on a site developed with a single-family structure as a special exception to the single-family use regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring properties.

BDA 223-052— Application of Emmy Zumwalt to construct and maintain an additional dwelling unit on a site developed with a single-family structure as a special exception to the single-family use regulations in the Dallas Development Code, subject to the following condition(s):

Compliance with the submitted site plan is required.

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

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Maker:	Phil Sahuc				
Second:	Andrew Finney				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Phil Sahuc, Andrew Finney, and Lawrence Halcomb
		Against:	-	0	

ADJOURNMENT

After all business of the Board of Adjustment had been considered, Chair Neumann moved to adjourn the meeting; motion by Kathleen Davis, seconded by Andrew Finney at 3:39 p.m.

Recess: 2:29 p.m.; Resume: 2:35 p.m.



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

07/18/2023
Date



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

7-18-23
Date



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

7/18/23
Date