



BOARD OF ADJUSTMENT

Panel B Minutes

January 17, 2024

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CITY SECRETARY
DALLAS, TEXAS

6ES Briefing Room
24974849659@dallascityhall.webex.com

Cheri Gambow, Vice-Chair

PRESENT: [5]

Cheri Gambow, VC	
Sarah Lamb	
Joe Cannon	
Michael Karnowski	
Dr. Emmanuel Glover	

ABSENT: [1]

Derrick Nutall	

Vice-Chair Gambow called the briefing to order at **10:30 A.M.** with a quorum of the Board of Adjustment present.

Vice-Chair Gambow called the hearing to order at **1:01 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.

Speakers:

- Liane Labarba – 7121 Brookshire Circle, Dallas TX 75230
- Jo Gododa – 7139 Brookshire Circle, Dallas TX 75230

MISCELLANEOUS ITEMS

Approval of the Board of Adjustment Panel B, December 13th, 2023 meeting minutes.

Motion was made to approve Panel B, December 13th, 2023 public hearing minutes.

Maker:	Sarah Lamb				
Second:	Michael Karnowski				
Results:	5-0 unanimously				Moved to approve
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb, Dr. Emmanuel Glover
		Against:	-	0	

UNCONTESTED ITEMS

**1. 1020 Comal Street
BDA234-001(DB)**

BUILDING OFFICIAL’S REPORT: Application of Adrian Williams for (1) a special exception to the front-yard setback regulations at 1020 COMAL ST. This property is more fully described as Block 46/3027, Part of lot 4 and is zoned PD-571, which requires a 20-foot front-yard setback must be provided. The applicant proposes to construct a single-family residential structure and provide a 5-foot front-yard setback at the west frontage, which will require (1) a 15-foot special exception to the front-yard setback regulations set forth by PD 571.

LOCATION: 1020 COMAL

APPLICANT: Adrian Williams

REQUEST: Special exception to the front-yard setback regulations.

STANDARD FOR A SPECIAL EXCEPTION:

Special Exception:
Per 51P-571.109(c) The board of adjustment may grant a special exception to the front, side, and rear yard setback requirements if the board finds, after a public hearing, that the special exception will not adversely affect the neighboring properties, the improvement is within the general building patterns of the neighborhood, and the special exception will preserve the character of the neighborhood. In granting a special exception to the setback requirements, the board may impose any other reasonable condition that would further the purpose and intent of the setback requirements of this article.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the front yard setback regulations since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect the neighboring properties, the improvement is within the general building patterns of the neighborhood, and the special exception will preserve the character of the neighborhood. In granting a special exception to the setback requirements, the board may impose any other reasonable condition that would further the purpose and intent of the setback requirements of this article.

BDA HISTORY:

No BDA history was found for this site within the past 5 years.

Lot area:
2888SF

Zoning:

Site: PD-571 (R-5(A))
North: PD-571 (R-5(A))
South: PD-571 (R-5(A))
East: PD-571 (R-5(A))
West: PD-571 (R-5(A))

Land Use:

The subject site is undeveloped but has a history of housing a single-family dwelling. The areas to the north, south and east of the property are developed with single-family residential dwellings. The area to the west is Interstate 35/S RL Thornton Service Rd.

GENERAL FACTS/STAFF ANALYSIS:

- There is currently no structure on the site; proposed new construction building permit is under review with development services.
- The zoning district for this property allows the board of adjustment to grant a special exception to the front yard setback, which would typically be a variance
- The site has a retaining wall to the west of the property, facing interstate 35/S RL Thornton service Rd., which currently prohibits access onto the site from the west, but it is unclear if the wall will remain after construction
- The average front yard setback @ Comal is between 23-25-feet
- The setback to the front yard @ S RL Thornton service Rd. is 20' per R-5(A) zoning
- The minimum side and rear yard for single-family structures is 5-feet per D(A) Duplex zoning
- The average side yard setback @ interior side yard is between 3-5-feet
- The lot has 2 street frontages that must comply with the required front yard setbacks due to block face continuity.
- All existing single family lots shown in Exhibit 571C that are less than 5,000 square feet are conforming lots for the development of single-family structures.

Timeline:

- October 24, 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.
- December 4, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.
- December 6, 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 December 22, 2023, deadline to submit additional evidence for staff to factor into their analysis; and

BOARD OF ADJUSTMENT
 January 17, 2024

January 5, 2024, 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 28, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November 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: Adrian Williams, 1020 Comal Street, Dallas TX

Against: No Speakers

Motion

I move that the Board of Adjustment **GRANT** the following applications 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 234-001 – Application of Adrian Williams for a special exception to the front-yard setback regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with the most recent version of all submitted plans are required.

Maker:	Sarah Lamb				
Second:	Joe Cannon				
Results:	5-0				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb & Dr. Emmanuel Glover
		Against:	-	0	

2. 4205 Duncanville Road

BDA234-002(CJ)

BUILDING OFFICIAL'S REPORT Application of Baldwin Associates for (1) a special exception to the landscaping regulations at 4205 DUNCANVILLE RD. This property is more fully described as Block 8032, Tract 2.1, and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct a non-residential structure and provide an alternate landscape plan, which will require (1) a special exception to the landscape regulations.

LOCATION: 4205 Duncanville Rd.

APPLICANT: Baldwin Associates - Rob Baldwin

REQUEST:

- (1) A request for a special exception to the landscape regulations

STANDARD FOR A SPECIAL EXCEPTION TO LANDSCAPE REGULATIONS:

SEC. 51A-10.125. MANDATORY LANDSCAPING REQUIREMENTS.

(b) **Other uses.** Lots containing a use other than single family or duplex must comply with the following requirements:

(1) **Street buffer zone.**

- (A) Urban streetscape.
- (B) Right-of-way.
- (C) Required planting.
- (D) Buffer zone reduction

(3) **Interior zone.**

- (A) Surface parking lots in industrial districts.
- (B) Surface parking lots.

(4) **Additional provisions.**

- (B) Site trees.

SEC. 51A-10.126. LANDSCAPE DESIGN OPTIONS.

(b) **Design options.**

STAFF RECOMMENDATION:

Special Exceptions (1):

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:** IR (Industrial District)
- North:** IR (Industrial District)
- East:** IR (Industrial District)
- South:** IR (Industrial District)
- West:** IR (Industrial District)

Land Use:

The subject site and all surrounding properties are developed with industrial uses.

BDA History:

No BDA history

GENERAL FACTS/STAFF ANALYSIS:

- The application Rob Baldwin, for the property located at 4205 Duncanville Road focuses on 1 request relating to the landscape regulations.
- The applicant proposes to construct and maintain a nonresidential structure and provide an alternate landscape plan which will require a (1) special exception to the landscape regulations.
- The applicant is seeking a special exception to the landscaping requirements of Article X. The site conditions of the new development include existing utility and pipeline easements along West Ledbetter Drive that restricts the planting of required trees along the street within the specified street buffer zone (SBZ). The proposed site design does not provide space for tree planting adjacent to the easements. The applicant requests approval of an alternate landscape plan which does not fully conform to Article X requirements.
- Per the Chief Arborist, the proposed alternate landscape plan complies partially with Article X regarding site trees, interior parking area requirements, the street buffer zone (SBZ) landscape area (10.125(b)), and the full requirement of 30 points for landscape design options (10.126).
- Both Duncanville Road and W. Ledbetter Drive have extensive street buffer zones (SBZ) as landscape area only and provide for 20 points of the 30 landscape design option points.
- Per the Chief Arborist, Article X requires one large/medium tree per 40 feet of street frontage in the street buffer zone. Twelve trees are required for the two streets within 30 feet of the street frontage. Due to the location of the utilities and easements, required trees cannot be planted within the required distance from the property boundary.
- The arborist division has no objection to the proposed alternate landscape plan for the new development because we believe that strict compliance with the requirements of Article X will unreasonably burden the use of the property and the design will not adversely affect neighboring property.
- It is imperative to note that the subject site has two street frontages, Duncanville Road and West Ledbetter Drive.
- The Dallas Development Code states that all lots containing a use other than single-family or duplex must comply with the provisions set forth SEC. 51A-10.125. Mandatory Landscape Requirements and SEC. 51A-10.126. Landscape Design Options
- The applicant has the burden of proof in establishing that the special exception(s) to the landscape regulations will not adversely affect the neighboring properties.
- Granting the special exceptions to the landscape regulations with a condition that the applicant complies with the submitted site plan/landscape plan, would require the proposal to be constructed as shown on the submitted documents.
- 200' Radius Video: [BDA234-002: 4205 Duncanville Rd.](#)

BOARD OF ADJUSTMENT
January 17, 2024

Timeline:

November 09, 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.

December 1, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

December 6, 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 December 22, 2023, deadline to submit additional evidence for staff to factor into their analysis; and January 5, 2024, 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 21, 2023: The applicant provided staff with Documentary Evidence.

December 28, 2023: The Board of Adjustment staff review team meeting was held regard request and other requests scheduled for the November 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 Code Compliance staff.

Speakers:

For: No Speakers

Against: No Speakers

Motion

I move that the Board of Adjustment **GRANT** the following applications 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 234-002—Application of Baldwin Associates, for a special exception to the landscaping regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with the most recent version of all submitted plans are required.

Maker:	Sarah Lamb				
Second:	Joe Cannon				

BOARD OF ADJUSTMENT
January 17, 2024

Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb & Dr. Emmanuel Glover
		Against:	-	0	

3. 1930 Hi Line Drive

****This Case was moved to Individual Cases****
BDA234-004(DB)

BUILDING OFFICIAL'S REPORT: Application of Jake Swiggett represented by Tommy Mann for (1) a special exception to the parking regulations at 1930 HI LINE DR. This property is more fully described as Block 37/7888, Part of lot 5A, and is zoned PD-621(1H), which requires parking to be provided. The applicant proposes to construct and/or maintain a mixed-use structure containing a residential use, and a restaurant without drive-in or drive-through service use and provide 915 parking spaces of the required 1465 parking spaces, which will require a 550-space special exception (38% reduction) to the parking regulation.

LOCATION: 1930 Hi Line Dr.

APPLICANT: Jake Swiggett

REPRESENTED BY: Tommy Mann

REQUEST: Special Exception to the Parking Regulations

STANDARD FOR A SPECIAL EXCEPTION:

Per PD-621(D) The board of adjustment may grant a special exception of up to 50 percent of the required off-street parking upon the findings and considerations listed in Section 51A-4.311. The board of adjustment may impose conditions on the special exception.

SEC. 51A-4.311. SPECIAL EXCEPTIONS.

(2) In determining whether to grant a special exception under Paragraph (1), the board shall consider the following factors:

(A) The extent to which the parking spaces provided will be remote, shared, or packed parking.

(B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

(C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.

(D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.

(E) The availability of public transit and the likelihood of its use.

(F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.

(3) In granting a special exception under Paragraph (1), the board shall specify the use or

BOARD OF ADJUSTMENT
January 17, 2024

uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.

(4) In granting a special exception under Paragraph (1), the board may:

(A) establish a termination date for the special exception or otherwise provide for the reassessment of conditions after a specified period;

(B) impose restrictions on access to or from the subject property; or

(C) impose any other reasonable condition that would have the effect of improving traffic safety or lessening congestion on the streets.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the parking regulations since the basis for this type of appeal is when in the opinion of the board, the special exception would not create a traffic hazard or increase traffic congestion on adjacent or nearby streets.

BDA HISTORY:

BDA190-004 request for a special exception to the parking regulation was previously granted for a 315-parking space reduction.

Lot area:

3.78 acres

Zoning:

Site: PD-621 Subdistrict 1H
North: MU-3-Mixed Use District
South: PD-621 Subdistrict 1E
East: PD-621 Subdistrict 1
West: MU-3-Mixed Use District

Land Use:

The subject site has been approved for a Mixed-use development which consist of multifamily, retail, and restaurant uses. The areas to the north, south east and west of the property are developed or proposed developments for multifamily, retail, restaurant, and lodging uses.

GENERAL FACTS/STAFF ANALYSIS:

- A request for a special exception to the parking regulations is being proposed.
- The Dallas Development Code requires parking to be provided.
- Previous Board of adjustment case granted a 315-parking space reduction for mixed use residential and retail structure. Uses included: multi-family, restaurant without drive-in or drive-through service use, general merchandise, or food store 3500 square feet or greater use.
- The site contains a parking garage that houses 900 parking spaces

Timeline:

November 16, 2023: The applicant submitted an "Application/Appeal to the Board of Adjustment"

BOARD OF ADJUSTMENT
 January 17, 2024

and related documents which have been included as part of this case report.

December 4, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

December 6, 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 December 22, 2023, deadline to submit additional evidence for staff to factor into their analysis; and January 5, 2024, 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 28, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November 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: Tommy Mann – 2728 N. Harwood St, Dallas TX 75201
 Daniel Box – 2728 N. Harwood, Dallas TX 75201

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 234-004, **HOLD** this matter under advisement until **February 21, 2024**.

Maker:	Sarah Lamb				
Second:	Dr. Emmanuel Glover				
Results:	5-0 Unanimously				Motion to hold
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb & Dr. Emmanuel Glover
		Against:	-	0	

4. 10940 Spangler Road

****This Case was moved to Individual Cases****
BDA234-007(DB)

BUILDING OFFICIAL'S REPORT: Application of Thomas Eyeington represented by Paul Rouse to (1) enlarge a non-conforming use at 10940 SPANGLER RD. This property is more fully described as Block E/6508, Lot 1 and is zoned IM, which limits the legal uses in a zoning district. The applicant proposes to enlarge a non-conforming industrial (inside) use, which will require (1) a special exception to the non-conforming use regulations.

LOCATION: 10940 Spangler Rd.

APPLICANT: Thomas Eyeington

REPRESENTED BY: Paul Rouse

REQUEST: A special exception to the nonconforming use regulations.

STANDARD FOR A SPECIAL EXCEPTION:

§51A-4.704(b)(5)(A) Enlargement of a nonconforming use.

(A) In this subsection, enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.

(B) The board may allow the enlargement of a nonconforming use when, in the opinion of the board, the enlargement:

- (i) **does not prolong the life of the nonconforming use;**
- (ii) **would have been permitted** under the zoning regulations that existed when the nonconforming use was originally established by right; and
- (iii) **will not have an adverse effect** on the surrounding area.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the enlargement nonconforming use regulations since the basis for this type of appeal is when in the opinion of the board, the enlargement:

- (i) **does not prolong the life of the nonconforming use;**
- (ii) **would have been permitted** under the zoning regulations that existed when the nonconforming use was originally established by right; and
- (iii) **will not have an adverse effect** on the surrounding area.

BDA HISTORY:

No BDA history within the last 5 years.

Square Footage:

This lot contains 326,729 square feet.

Zoning:

Site: IM- Industrial Manufacturing District
North: IM- Industrial Manufacturing District
South: IR-Industrial/Research District
East: IR-Industrial/Research District
West: IM- Industrial Manufacturing District

Land Use:

The subject site is developed with an existing industrial (outside) use. The areas to the north, south east and west of the property are undeveloped and/or contain industrial (outside) uses.

GENERAL FACTS/STAFF ANALYSIS:

- This lot is zoned IM-Industrial Manufacturing, which requires a specific use permit for the enlargement of the existing nonconforming use. Applicant is proposing to enlarge a nonconforming Industrial (inside) use.
- A request for a special exception to enlarge a nonconforming use is made to construct and/or maintain new modular building (approximately 2016sf).
- The Dallas Development Code limits the legal uses in an IM zoning district without a specific use permit.

Timeline:

November 21, 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.

December 4, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

December 6, 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 December 22, 2023, deadline to submit additional evidence for staff to factor into their analysis; and January 5, 2024, 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 28, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November 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: Tommy Mann, 2728 N. Harwood, Dallas TX 75201

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 234-007, on application of Thomas Eyeington, **GRANT** the request of this applicant to enlarge a nonconforming use because our evaluation of the property and the testimony shows that enlarging the nonconforming use (1) will not prolong the life of the nonconforming use; (2) would have been permitted under the zoning regulations that existed with the nonconforming use was originally established by right; and (3) will not have an adverse effect on the surrounding area.

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

Compliance with all submitted site plan is required.

Maker:	Sarah Lamb				
Second:	Joe Cannon				
Results:	4-1				Motion to grant
		Ayes:	-	4	Cheri Gambow, Joe Cannon, Sarah Lamb & Dr. Emmanuel Glover
		Against:	-	1	Michael Karnowski

5. 4811 Kelsey Road

****This Case was moved to Individual Cases****
BDA234-010(KMH)

BUILDING OFFICIAL'S REPORT Application of Aaron Wallrath represented by Anup Tamrakar for (1) a special exception to the fence height regulations, and for (2) a special exception to the fence opacity standards regulations at 4811 KELSEY RD. This property is more fully described as Block B/5532, Lot 3-C, and is zoned R-1ac(A), which limits the height of a fence in the front-yard to 4-feet and requires a fence panel with a surface area that is less than 50 percent open not be located within 5-feet from the front-lot line. The applicant proposes to construct and/or maintain a 7-foot high fence in a required front-yard, which will require (1) a 3-foot special exception to the fence height regulations, and to construct 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 (2) a special exception to the fence opacity regulations.

LOCATION: 4811 Kelsey Rd.

APPLICANT: Aaron Wallrath

REPRESENTED BY: Anup Tamrakar

REQUEST:

- (2) A request for a special exception to the fence height regulations; and
- (3) A request for a special exception to the fence standards/opacity regulations.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT STANDARDS REGULATIONS:

Section 51A-4.602(b)(2) 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.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE OPACITY STANDARD REGULATIONS:

Section 51A-4.602(a)(11) 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:

Special Exceptions (2):

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

Land Use:

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

BDA History:

No BDA history

GENERAL FACTS/STAFF ANALYSIS:

- The application of Aaron Wallrath for the property located at 4811 Kelsey Rd. focuses on 2 requests relating to the fence height and fence opacity regulations.
- The applicant proposes to construct and maintain a 7-foot high fence in a required front yard, which will require a 3-foot special exception to the fence height regulations.
- Additionally, the applicant is proposing to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5-feet from the front lot line, which requires a special exception to the fence opacity regulations.
- The subject site along with properties to the north, east, south and west are all developed with single-family homes.
- As gleaned from the submitted site plan and elevations, the applicant is proposing to construct and maintain a 7-foot-high wrought iron fence along Kelsey Road.
- 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 Dallas Development Code also states that no fence panel having less than 50 percent open surface area may be located less than 5-feet from the lot line.

BOARD OF ADJUSTMENT
January 17, 2024

- The applicant has the burden of proof in establishing that the special exception(s) to the fence regulations will not adversely affect the neighboring properties.
- Granting the special exceptions to the fence standards relating to height and opacity with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.
- BDA234-010 at 4811 Kelsey Rd. 200' Radius Video

Timeline:

November 21, 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.

December 1, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

December 6, 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 December 22, 2023, deadline to submit additional evidence for staff to factor into their analysis; and January 5, 2024, 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 28, 2023: 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 Interim Chief Planner/Board Administrator, the Development Services Senior Plans Examiner and the Senior Planner.

Speakers:

For: Aaron Wallrath – 4811 Kelsey road, Dallas TX

Against: No Speakers

Motion

I move that the Board of Adjustment in Appeal No. BDA 234-010, **HOLD** this matter under advisement until **February 21, 2024**.

Maker:	Sarah Lamb			
Second:	Michael Karnowski			

BOARD OF ADJUSTMENT
January 17, 2024

Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Sarah Lamb & Dr. Emmanuel Glover
		Against:	-	0	

HOLDOVER

6. 1914 Ashby Street
BDA223-112(DB)

BUILDING OFFICIAL’S REPORT: Application of Nash Chasi for (1) a variance to the side-yard setback regulations at 1914 Ashby St. This property is more fully described as Block 9/658, Lot 12 and is zoned MF-2(A), which requires side-yard setback of 10- feet. The applicant proposes to construct a multi-family residential structure and provide a 5-foot side-yard setback, which will require a (1) 5-foot variance to the side-yard setback regulations.

LOCATION: 1914 Ashby St.

APPLICANT: Nash Chasi

REQUEST:

(1) A request for a variance to the side-yard setback regulations.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Variance to front yard setback:

Approval

Rationale: Based upon evidence presented and provided by the applicant, staff concluded that the site is:

- A. Not contrary to the public interest as no letters of opposition were received.

BOARD OF ADJUSTMENT
January 17, 2024

- B. Restrictive in area and shape for the proposed multifamily development. The narrowing of the lot for the alley expansion has limited the buildable area at the east side of said property; the property cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- C. Not a self-created or personal hardship.

BDA HISTORY:

No BDA history within the last 5 years.

Moved to be held over under advisement until January 17, 2024

Square Footage:

This lot contains 6518 square feet.

This lot is zoned MF-2A which requires a minimum lot area per dwelling unit. Applicant is proposing 5: 2-bedroom dwelling units therefore, they are required to have a minimum of 6000sf lot area to comply with lot size regulation.

Zoning:

Site: MF-2(A) Multifamily District
North: MF-2(A) Multifamily District
South: MF-2(A) Multifamily District
East: MF-2(A) Multifamily District
West: MF-2(A) Multifamily District

Land Use:

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

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the side yard setback regulations of 10-feet is made to construct and/or maintain a multi-family residential structure.
- The applicant proposes to construct and maintain a multi-family residential structure and provide a side yard setback of 5-feet
- The Dallas Development Code requires a 10-foot setback for required side yards in the MF-2(A) zoning district

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

- That granting the variance to the front yard setback and to the building height 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 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.
- Granting the proposed 5-foot variance to the side yard setback with a condition that the applicant complies with the most recently submitted plan(s), would require the proposal to be constructed as shown on the submitted documents.

BOARD OF ADJUSTMENT
January 17, 2024

- Case was moved to be held over under advisement until January 17, 2024

Timeline:

- October 12, 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.
- October 26, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.
- October 26, 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 November 20, 2023, deadline to submit additional evidence for staff to factor into their analysis; and December 1, 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.
- November 22, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November 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.
- December 13, 2023 The Board of Adjustment Panel B moved to hold over under advisement until January 17, 2024.

Speakers:

For: Nash Chasi – 1914 Ashby Street, Dallas TX

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-112, on application of Nash Chasi, **GRANT** the 5-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.

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

Compliance with the most recent version of all submitted plans are required.

BOARD OF ADJUSTMENT
January 17, 2024

Maker:	Michael Karnowski				
Second:	Sarah Lamb				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Dr. Emmanuel Glover, Sarah Lamb
		Against:	-	0	

INDIVIDUAL CASES

7. 1874 Temper Road
BDA234-011(CJ)

BUILDING OFFICIAL’S REPORT: Application of Gregory Urech represented by KFM Engineering and Design for (1) a variance to the front-yard setback regulations at 1874 TEMPER LN. This property is more fully described as Block D/8826, Lot 5 and is zoned R-7.5(A) within a Community Unit Development, which requires a front-yard setback of 20-feet per plat amendment. The applicant proposes to construct and/or maintain a single-family residential structure and provide an 18-foot 4-inch front-yard setback, which will require (1) a 1-foot 8-inch variance to the front-yard setback regulations.

LOCATION: 1874 Temper Ln.

APPLICANT: Gregory Urech

REPRESENTED BY: KFM Engineering and Design

REQUEST:

(2) A request for a variance to the front yard setback regulations.

STANDARD FOR A VARIANCE:

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

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

ELEMENT II SUBSTITUTE

Dallas Development Code §51A-3.102(d)(10)(b), formerly known as HB 1475, allows for the BDA to use their discretion and consider Element 2 of the Variance standard to be met, if:

- (i) 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 of the Texas Tax Code;
- (ii) 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;
- (iii) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (iv) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (v) the municipality considers the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Denial

Rationale: Based upon evidence presented and provided by the applicant, staff concluded that the site is:

- A. Not contrary to the public interest as no letters of opposition were received.
- B. Restrictive in area due to the lot size (6,534sqft); therefore, the property cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- C. self-created or personal hardship. Contractors began framing the home and failed to realize they were 1.5' beyond the building setback. Plans showing required 20-foot setback were approved & issued under building permit #2305121150.

BDA HISTORY:

No BDA history found within the last 5 years.

Square Footage:

This lot contains 6,534 of square feet.

This lot is zoned R-7.5(A) which has a minimum lot size of 7,500 square feet.

Zoning:

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

Land Use:

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

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the front yard setback regulations of 1-foot 8-inch is made to construct and/or maintain a single-family residential structure.
- The subject site is currently developed with a single-family dwelling unit.

BOARD OF ADJUSTMENT
January 17, 2024

- Zoning District R-7.5(A) requires a minimum setback of 25-feet. Recorded Certificate of Correction (instrument no. 202300121074) for plat S178-066A (CUD) states that all front building lines shall be 20-feet as allowed by the approved 25% reduction in lot size under the reference Community Unit Development rules.
- As gleaned from the submitted site plan, the newly constructed home encroaches into the 20-foot required front yard setback.

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

- That granting the variance to the front yard setback will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such 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.

The board may also consider Dallas Development Code **§51A-3.102(d)(10)(b)**, formerly known as **HB 1475** 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.
- Granting the proposed 8-foot 1-inch variance to the front yard setback regulations with a condition that the applicant complies with the submitted site plan, would require the proposal to be constructed as shown on the submitted documents.

- (200' radius video) [BDA234-011: 1874 Temper Ln](#)

Timeline:

- November 22, 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.
- December 1, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.
- December 6, 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 December 22, 2023, deadline to submit additional evidence for staff to factor into their analysis; and

BOARD OF ADJUSTMENT
January 17, 2024

January 5, 2024, 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 28, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the December public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner and the Senior Planner.

Speakers:

For: Sandra Lee – 1707 Market Place Blvd., Irving TX

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 234-011, on application of John Doe, **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:	Sarah Lamb				
Second:	Michael Karnowski				
Results:	3-2				Motion to deny
		Ayes:	-	3	Cheri Gambow, Michael Karnowski, Sarah Lamb
		Against:	-	2	Joe Cannon, Dr. Emmanuel Glover

8. 7217 Brookshire Circle
BDA234-018(DB)

BUILDING OFFICIAL'S REPORT: Application of Peter Kofoed represented by Melissa Miles (1) to appeal the decision of the administrative official at 7217 BROOKSHIRE CIR. This property is more fully described as Block 6/6586, Lot 1, and is zoned R-16(A), which no private swimming pool may be constructed in the required front-yard. The applicant proposes (1) to appeal the decision of an administrative official in the denial of a building permit that was issued incorrectly by the development services department.

LOCATION: 7217 Brookshire

APPLICANT: Peter Kofoed

REPRESENTED BY: Melissa Miles

REQUEST:

A request is made to appeal the decision of the administrative official in the denial of building permit 2203031044 that was issued incorrectly by the development services department.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

BDA History:

BDA223-053; Special Exception to the fence height regulations; Denial

Zoning:

Site: R-16(A)-Single Family Zoning District
North: R-16(A)-Single Family Zoning District
South: R-13(A)-Single Family Zoning District
East: R-16(A)-Single Family Zoning District
West: R-13(A)-Single Family Zoning District

Land Use:

The subject site is developed with a single-family home. The surrounding properties are also developed with single-family homes.

GENERAL FACTS/STAFF ANALYSIS:

- The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

Timeline:

November 27, 2023: The applicant was sent a denial letter for permit number 2203031044 which was incorrectly issued by Development Services Department and is invalid.

December 17, 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.

December 18, 2023: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

BOARD OF ADJUSTMENT
January 17, 2024

December 22, 2023: The Senior Planner emailed the applicant’s representative the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the December 28th deadline to submit additional evidence for staff to factor into their analysis; and the January 5th, 2024 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 28th 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the August 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: Melissa Miles – 17304 Preston Rd.Ste 300, Dallas TX 75252

Against: No Speakers

Staff: Justin Roy, city Attorney – 1500 Marilla St.7DN, Dallas TX 75201

Motion

I move that the Board of Adjustment in Appeal No. BDA 234-018, **HOLD** this matter under advisement until **February 21, 2024**.

Maker:	Sarah Lamb				
Second:	Joe Cannon				
Results:	5-0 Unanimously				Motion to hold
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Joe Cannon, Dr. Emmanuel Glover, Sarah Lamb
		Against:	-	0	

ADJOURNMENT

After all business of the Board of Adjustment had been considered, Vice-Chair Cheri Gambow moved to adjourn the meeting at 3:24 p.m.

BOARD OF ADJUSTMENT
January 17, 2024

Mary Williams

Required Signature:

Mary Williams, Board Secretary
Development Services Dept.

2/21/2024

Date

[Signature]

Required Signature:

Jason Pool, DEV Administrator
Development Services Dept.

2/21/24

Date

Cheri Gambow

Required Signature:

Cheri Gambow, Vice-Chair
Board of Adjustment

2/21/24

Date