

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE  
WEDNESDAY, SEPTEMBER 22, 2021**

MEMBERS PRESENT AT BRIEFING: Nick Brooks, Acting Chair, Matt Shouse, regular member, Matthew Vermillion, regular member and Jared Slade, alternate member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Nick Brooks, Acting Chair, Matt Shouse, regular member, Matthew Vermillion, regular member and Jared Slade, alternate member

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Pamela Daniel, Senior Planner Anna Holmes, Asst. City Atty., Charles Trammell, Development Code, Secretary, Robyn Gerard, Public Information Officer, David Nevarez, Engineering Division, Andreea Udrea, Assistant Director Interim and Carolina Yumet, Interim Assistant Director

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Pamela Daniel, Senior Planner Anna Holmes, Asst. City Atty., Charles Trammell, Development Code, Secretary, Robyn Gerard, Public Information Officer, David Nevarez, Engineering Division, Andreea Udrea, Assistant Director Interim and Carolina Yumet, Interim Assistant Director

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**11:06 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 22, 2021 docket.**

**BOARD OF ADJUSTMENT ACTION: September 22, 2021**

**1:02 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel B, August 18, 2021 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: September 22, 2021**

**MOTION: Slade**

Approval of the Board of Adjustment Panel B, August 18, 2021 public hearing minutes.

**SECONDED: Shouse**

**AYES: 4 – Brooks, Slade, Shouse, Vermillion**

**NAYS: 0**

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

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**FILE NUMBER:** BDA201-076(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Vincent Hunter for a special exception to the single-family use regulations at 7529 Royal Place. The property is more fully described as Lot 18 in City Block 1/7287 and is zoned an R-16(A) Single Family District, which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling non-rental unit, which will require a special exception to the single-family zoning use regulations.

**LOCATION:** 7529 Royal Place

**APPLICANT:** Vincent Hunter

**REQUESTS:**

The proposed request for a special exception to the single-family use regulations is made to construct and maintain a one-story additional dwelling unit structure on a site developed with a one-story single-family use.

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

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

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

**STAFF RECOMMENDATION:**

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

**Zoning:**

Site: R-16(A) Single Family District

North: R-16(A) Single Family District

East: R-16(A) Single Family District

South: R-16(A) Single Family District

West: R-16(A) Single Family District

**Land Use:**

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

**Zoning/BDA History:** There have been three recent board cases in the vicinity within the last five years.

1. **BDA201-048:** An application for a variance to the rear yard setback regulations, and for a variance to the side yard setback regulations at 7515 Lavendale Avenue was granted by the Board of Adjustment, Panel A on August 17, 2021.
2. **BDA178-037:** An application for special exceptions to the fence standards regulations at 10811 Stone Canyon Road to construct and maintain an eight-foot-high solid board-on-board wood fence in a required front yard and to have a fence panel having less than 50 percent open surface area was granted by the Board of Adjustments, Panel B on August 18, 2018.
3. **BDA167-117:** An application for special exceptions to the fence standards at 10802 Dove Brook Circle to construct and maintain an 8 foot high fence in a required front yard, which required a four foot special exception to the fence standards and 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 five feet from the front lot line was granted by the Board of Adjustments, Panel B on November 15, 2017.

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

This request for a special exception to the single-family use regulations focuses on constructing and maintaining a one-story additional dwelling unit on a site developed with an existing one-story main single-family dwelling unit.

The site is zoned an R-16(A) Single Family District where the Dallas Development Code permits only one dwelling unit per lot.

The single-family use regulations of the Dallas Development Code states 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 a 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” as “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” as “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sunrooms, and other similar rooms are considered bedrooms.”

The submitted site plan depicts two building footprints, the larger of the two is the existing single-family dwelling unit or main structure and the smaller of the two is the proposed one-story wood framed additional dwelling unit that consists of approximately 658 square feet.

This request centers on the function of what is proposed to be inside the smaller structure on the site – the proposed one-story wood framed dwelling unit, specifically its collection of rooms/features shown on the floor plan.

According to DCAD records, the “main improvement” for the property addressed at 7529 Royal Place is a structure built in 1964 with approximately 3,674 square feet of floor area with an “additional improvement,” of 540-square-feet for an attached garage.

According to the submitted site plan the main structure contains 3,674 square feet of total floor area and the proposed additional dwelling unit contains 658 square feet of total floor area.

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

As of September 14, 2021, staff has received one letter in support and no letters in opposition.

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.

On August 30, 2021, the applicant submitted a statement (**Attachment A**) noting how the proposed additional dwelling unit would be used as guest quarters and not used for rental accommodations. No further details were provided.

If the board were to approve this request, the board may choose to impose a condition that the applicant complies with the site plan if they feel it is necessary to ensure that the special exception will not adversely affect neighboring properties. But 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).

**Timeline:**

June 21, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 5, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

August 16, 2021: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

August 30, 2021: The applicant submitted evidence to staff. (**Attachment A**)

September 3, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings.

Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Building Inspection Chief Planner, the Interim Assistant Director of Current Planning, and the Assistant City Attorney to the board.

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

**BOARD OF ADJUSTMENT ACTION: September 22, 2021**

**APPEARING IN FAVOR:** Vincent Hunter 7529 Royal Place Dallas, TX  
Julius Aguilar 7547 Royal Place Dallas, TX  
John West 1 Rue Du Lac St. Dallas, TX  
John Monares 7529 Royal Place Dallas, TX

**APPEARING IN OPPOSITION:** None.

**MOTION: Slade**

I move that the Board of Adjustment, in Appeal No. BDA 201-076, on application of Vincent Hunter, **grant** the special exception to the single-family regulations contained in the Dallas Development Code subject to the following conditions:

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

**SECONDED: Shouse**  
**AYES: 4 - Shouse, Slade, Vermillion, Brooks**  
**NAYS: 0 -**  
**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA201-083(PD)**

**BUILDING OFFICIAL’S REPORT:** Application of Rob Baldwin of Baldwin Associates for a special exception to the fence height regulations at 4727 Kelsey Road. This property is more fully described as Part of Lot 3 in City Block B/5532 and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to install and maintain a six-foot four-inch-high fence in the front yard along Kelsey Road, which will require a two-foot four-inch special exception to the fence regulations.

**LOCATION: 4727 Kelsey Road**

**APPLICANT: Rob Baldwin of Baldwin Associates**

## **REQUESTS:**

The applicant proposes to install a six-foot four-inch-high fence with double swing metal gates and pilasters constructed of metal (fence & gate) and brick (pilasters) in a required front yard along Kelsey Road.

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

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

## **STAFF RECOMMENDATION:**

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

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

The subject site and all surrounding properties are developed with single family uses to the east, south, and west. The property to the north along Roxbury Lane is undeveloped.

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

There have been five board cases recorded in the vicinity of the subject site within the last five years.

1. **BDA178-107:** On November 14, 2018, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations at 4747 Roxbury Drive.
2. **BDA178-038:** On May 21, 2018 the Board of Adjustment Panel C granted a request for a special exception to the fence standards and visual obstruction regulations at setback at 10515 Lennox Lane.

3. **BDA167-047:** On April 17, 2017, the Board of Adjustment Panel C granted a request for a special exception to the fence standards and visual obstruction regulations of four feet in the front yard setback at 10545 Lennox Lane.
4. **BDA167-140:** On December 11, 2017, the Board of Adjustment Panel C granted a request for a special exception to construct and/or maintain a 6-foot-high fence in a required front yard, which will require a 2 foot special exception to the fence standards, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line at 10564 Lennox Lane.
5. **BDA167-041:** On January 17, 2018, the Board of Adjustment Panel B granted a request for variances to the front yard setback, side yard setback, and off-street parking regulations at 11123 W. Ricks Circle.

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

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

The applicant proposes to construct and maintain a six-foot four-inch-high fence with double swing metal gates and pilasters constructed of metal (fence & gate) and brick (pilasters) in a required front yard along Kelsey Road, which will require a two-foot four-inch special exception to the fence regulations.

The following additional information was observed from the submitted site plan and elevation:

- The proposed fence is approximately 150 feet-in-length facing Kelsey Road.
- Located from the property line and approximately 94-and-three-quarter feet into the property, within the required front yard.
- The fence is composed of metal (fence & gate) and brick (pilasters) no taller than six-feet four-inches-in-height.
- Pedestrian and vehicular gates are proposed along northeastern and southeastern portion of the property along Kelsey Road.

Staff conducted a field visit of the site and surrounding area and noted various other fences that appear to be above four feet-in-height and located in a front yard setback. The aforementioned BDA history illustrates some of the properties that present fences above four feet-in-height.

The applicant has the burden of proof in establishing whether the special exception to the fence height regulation of two-feet four-inches will or will not adversely affect neighboring property.

Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding completely into the required 40-foot front yard setback to be constructed in the location and height as shown on the plans.

**Timeline:**

July 14, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 9, 2021: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

August 16, 2021: The Senior Planner emailed the applicant the public hearing date and panel that will consider the application; the August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application;
- 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.”

September 3, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Building Inspection Chief Planner, the Interim Assistant Director of Current Planning, and the Assistant City Attorney to the board.

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

**BOARD OF ADJUSTMENT ACTION: September 22, 2021**

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

APPEARING IN OPPOSITION: None.

MOTION: **Slade**

I move that the Board of Adjustment, in Appeal No. BDA 201-083, on application of Rob Baldwin of Baldwin Associates, **grant** the special exception to the fence height regulations contained in the Dallas Development Code subject to the following conditions:

Compliance with the submitted site and elevation plan is required.

**SECONDED: Shouse**

**AYES:** 4 - Shouse, Slade, Vermillion, Brooks

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA201-086(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Grant Smith for 1) a variance to the front yard setback regulations to provide a six-foot front yard setback which will require a 19-foot variance, 2) a special exception to the fence height regulations to provide an 11-foot-high fence in a required front yard which will require a seven-foot special exception, and 3) a special exception to the fence standards regulations to provide a fence panel having less than 50 percent open surface area located less than five feet from the front lot line at 9819 Elmcrest Drive. This property is more fully described as Lot 2-A, Block H/8127, and is zoned an R-7.5(A) Single Family District which requires a front yard setback of 25 feet, limits the height of a fence in the front yard to four feet, and permit a solid fence in a required front yard with a fence panel having less than 50 percent open surface area. The applicant proposes to construct a single-family residential accessory structure (in-ground swimming pool), a three-foot-high retaining wall with an eight-foot-high solid wood fence for a maximum height of 11 feet, all proposed in the front yard setback along White Rock Trail.

**LOCATION:** 9819 Elmcrest Drive

**APPLICANT:** Grant Smith

**REQUEST:**

The applicant proposes to construct and maintain a swimming pool, retaining wall and fence located as close as six feet from the front property line. The property is currently developed with an approximately 3,742-square-foot, one-and-one-half story, single-family dwelling constructed in 1967.

**STANDARD FOR A VARIANCE:**

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

- (A) not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;

- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION (variance to front yard):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The property is irregular in shape, has two front yards with a 20-foot build line and a 30-foot build line, respectively, and has a slight slope. The site is only one of three that requires two build lines; however, removal of platted build lines cannot be remedied through the board or the variance process. Per Sec. 51A-8.505(c), if an existing platted build line established a minimum front, side, or rear yard setback greater than the minimum front, side, or rear yard setback required by zoning regulation, relief from the platted building line must be sought through a replat submitted to the Commission. Additionally, the subject property appears to be one of only two lots within the general vicinity that has significant topography changes that warrant a retaining wall which does not exist on other properties within the general vicinity. Therefore, the subject site is unique and different from most lots in the R-7.5(A) Single Family District. Finally, these conditions further restrict the property from being developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning classification.

**STANDARD FOR A SPECIAL EXCEPTION TO THE FENCE STANDARDS (height and openness):**

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-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: PDD No. 459 (non-residential district)

**Land Use:**

The properties to the north, south, and east are developed with single-family uses. The property to the east along White Rock Trail is developed with a private school, office, and surface parking uses.

**ZONING/BDA HISTORY:**

There have been no related zoning or board cases in the vicinity within the last five years.

**GENERAL FACTS /STAFF ANALYSIS:**

This request for a variance to the front yard setback regulations of up to 19-feet is made to construct and maintain a residential accessory structure, a swimming pool and hot tub structure with approximately 1,077 square feet of floor area. The site subject is developed with a single-family home and located in an R-7.5(A) Single Family District which requires a minimum front yard setback of 25 feet.

The submitted site plan indicates that the proposed structure is located as close as six feet from the front property line along White Rock Trail and as much as 19 feet into the required 25-foot front yard setback.

Lots in this district are typically 7,500 square feet in area. The subject site is somewhat sloped, contains two front yards: one along Elmcrest Drive, and the second along White Rock Trail. Additionally, the plat indicates that only three lots within the block face that contains two platted build lines. The first platted build line across Elmcrest Drive requires a 30-foot build line and the second platted build line across White Rock Trail requires a 20-foot build line. Further the application, the subject site is 0.339 acres (or approximately 14,766 square feet) in lot area.

According to DCAD records, improvements listed for the property addressed at 9819 Elmcrest Drive consists of a one-and-one-half story single family dwelling with approximately 3,742 square feet of floor area and one attached garage with approximately 656 square feet of floor area.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

As of September 10, 2021, two letters have been submitted in support of the request.

If the board were to grant the variance request and impose the submitted site plan as a condition, the swimming pool with hot tub structure with approximately 1,077 square feet of floor area located partially in the front yard setback, would be limited to what is shown on this document.

**Timeline:**

- July 19, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 5, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 17, 2021: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant the following information:
  - a copy of the application materials including the Building Official’s report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

September 3, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Building Inspection Chief Planner, the Interim Assistant Director of Current Planning, and the Assistant City Attorney to the board.

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

**BOARD OF ADJUSTMENT ACTION: September 22, 2021**

APPEARING IN FAVOR: Grant Smith 9819 Elmcrest Dr. Dallas, TX.

APPEARING IN OPPOSITION: None.

**MOTION#1: Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 201-086, on application of Grant Smith, **grant** the nineteen-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

**SECONDED: Slade**

**AYES: 4 - Shouse, Slade, Vermillion, Brooks**

**NAYS: 0 -**

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

**MOTION#2: Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 201-086, on application of Grant Smith, **grant** the request of this applicant to construct and/or maintain an eleven-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

**SECONDED: Slade**

**AYES:** 4 - Shouse, Slade, Vermillion, Brooks

**NAYS:** 0 -

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

**MOTION#3: Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 201-086, on application of Grant Smith, **grant** the request of this applicant to construct and/or maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as a special exception to the surface area openness requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

**SECONDED: Slade**

**AYES:** 4 - Shouse, Slade, Vermillion, Brooks

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA201-085(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Practice An Architectural Office represented by Kristin Perkins for 1) a variance to the side yard setback regulations of two-feet to construct an accessory structure three-feet into a required five-foot side yard setback; 2) a variance to the single-family use regulations to construct and maintain a 1,517-square-foot additional dwelling unit (39.5 percent of the 3,839 square foot floor area of the main structure) which will require a 558-square-foot variance to the floor area ratio of the main structure; and 3) a special exception to the single-family use regulations to construct and maintain a two-story additional dwelling unit for non-rent on a site developed with an existing single-family dwelling unit at 732 Kessler Lake Drive. This property is more fully described as Lot 1 in City Block B/3386 and is zoned an R-7.5(A) Single Family District, in which a minimum side yard setback of five feet must be maintained, an accessory structure may not exceed 25 percent of the floor area of the main structure, and not more than one single family dwelling unit can be constructed on a lot.

**LOCATION:** 732 Kessler Lake Drive

**APPLICANT:** Practice an Architectural Office represented by Kristin Perkins

**REQUESTS:**

The applicant proposes to construct and maintain an additional dwelling unit with approximately 1,517 square feet of floor area on a site developed with a single-family dwelling.

**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.

**STAFF RECOMMENDATION (both variances):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site is unique and different from most lots in the R-7.5(A) Single Family District considering its restrictive lot area of 19,880 square feet so that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning. The applicant submitted documents (**Attachment A & B**) indicating the average lot in the area is 58,848 square feet with an average of 6,471 square feet for improvements. The proposed 1,517-square-foot additional dwelling unit on the site is commensurate to four other lots in the same zoning district.

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

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 adversely affect neighboring properties.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

The requests for variances to the side yard setback and maximum floor area ratio regulations and a special exception to the single-family use regulations focus on constructing and maintaining a 1,517-square-foot additional dwelling unit (non-rent) to be constructed three-feet into a required five-foot side yard setback. The property is zoned an R-7.5(A) Single Family District. In this district, one dwelling unit is allowed per lot. Additionally, a minimum side yard setback of five feet is required and an additional dwelling unit (ADU) cannot exceed 25 percent of the floor area ratio of the main structure.

DCAD records indicate the following improvements for the property located at 732 Kessler Lake Drive: “main improvement: a structure with 3,133 square feet of living area built-in 1986” and “additional improvements: a 504-square-foot detached garage and 750-square-foot “detached quarters”. The proposed ADU with 1,517 square feet of floor area represents 39.5 percent of the 3,839 square foot floor area of the main structure, which requires a 558-square-foot variance to the floor area ratio of the main structure proposed.

City records reflect permits for the construction of the one-story accessory structure issued on May 1, 1989 at a floor area ratio of approximately 750 square feet. Additionally, city records reflect building plans depicting the accessory structure and the encroachment of two feet into the required five-foot side yard setback.

The site plan denotes the proposed addition of a floor area to the ADU of approximately 767 square feet for a total floor area of 1,517 square feet. The accessory structure addition will equal to 39.5 percent of the existing 3839-square-foot floor area of the main structure. The site plan

confirms the size and location of these structures, including the ADU located three feet into the five-foot required side yard setback.

The property is irregular in shape since it is neither rectangular nor square, slightly sloped, and according to the application, contains 0.46 acres, or approximately 19,880 square feet in area. In an R-7.5(A) Single Family District the minimum lot size is 7,500 square feet. However, properties within the vicinity are greater than ten times the minimum lot size.

The applicant has submitted a document comparing the lot sizes and improvement of the subject site with four other properties in the vicinity with the same zoning. The average lot is 58,848 square feet with an average of 6,471 square feet for improvements. The proposed 1,517-square-foot additional dwelling unit on the site is commensurate to four other lots in the same zoning district.

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

- That granting the variance to the floor area regulations for structures accessory to single-family uses will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same zoning classification.

As of September 9, 2021, no letters have been submitted in support of or in opposition to the request.

Ultimately, the three requests are independent, and the board must consider the standards and evidence presented for each request.

If the board were to grant the variances to the floor area regulations for structures accessory to single-family uses and to the side yard setback and impose the submitted site plan as a condition, the building footprints of the structures on the site would be limited to what is shown on this document. Furthermore, if the board were to grant the special exception to allow the ADU expansion, 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.

However, granting these requests 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 other code requirements), as depicted on the site plan, including the increase in floor area ratio and encroachment into the side yard setback if each is approved by the board.

**Timeline:**

- July 21, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 5, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.
- August 17, 2021: The 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 August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 31, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachments A & B**).
- September 3, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Building Inspection Chief Planner, the Interim Assistant Director of Current Planning, and the Assistant City Attorney to the board.
- No review comment sheets were submitted in conjunction with this application.

**BOARD OF ADJUSTMENT ACTION: September 22, 2021**

**APPEARING IN FAVOR:** Steven Dimitt 1201 N. Riverfront Blvd. #150 Dallas, TX.

**APPEARING IN OPPOSITION:** None.

**MOTION#1: Brooks**

I move that the Board of Adjustment, in Appeal No. BDA 201-085, on application of Practice an Architectural Office, represented by Kristin Perkins, **grant** the two-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 submitted site plan is required.

SECONDED: Slade

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

MOTION#2: Brooks

I move that the Board of Adjustment, in Appeal No. BDA 201-085, on application of Practice an Architectural Office, represented by Kristin Perkins, **GRANT** the 558-square-foot variance to the floor area ratio regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Slade

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

MOTION#3: Brooks

I move that the Board of Adjustment, in request No. BDA 201-085, on application of Practice an Architectural Office, represented by Kristin Perkins, **grant** the request to construct and maintain an accessory dwelling unit on a site developed with a single family structure as a special exception to the single family use regulations requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring properties.

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

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

SECONDED: Slade

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

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**MOTION: Vermillion**

I move to adjourn the Panel B hearing.

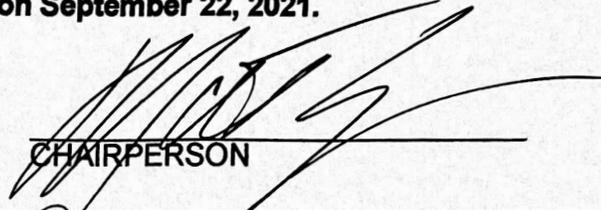
**SECONDED: Brooks**

**AYES: 4 - Shouse, Slade, Vermillion, Brooks**

**NAYS: 0 -**

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

The meeting was adjourned at **1:47 P.M. on September 22, 2021.**



CHAIRPERSON



BOARD ADMINISTRATOR



BOARD SECRETARY

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