



BOARD OF ADJUSTMENT

Panel C Minutes

December 11, 2023

RECEIVED
2024 FEB 26 AM 9:13
CITY SECRETARY
DALLAS, TEXAS

6ES Briefing Room
24957316190@dallascityhall.webex.com

Robert Agnich, Vice-Chair

PRESENT: [5]

Robert Agnich, VC	
Rodney Milliken	
Jared Slade	
Judy Pollock	
Roger Sashington	

ABSENT: [0]

Vice-Chair Agnich called the briefing to order at **10:3 A.M.** with a quorum of the Board of Adjustment present.

Vice-Chair Agnich called the hearing to order at **1:05 P.M.** with a quorum of the Board of Adjustment present.

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

PUBLIC SPEAKERS

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

- We had no speakers for public testimony during this hearing.

MISCELLANEOUS ITEMS

Approval of the 2022-2023 Board of Adjustment Annual Report.

Motion was made to approve the 2022-2023 Board of Adjustment Annual Report

Maker:	Roger Sashington				
Second:	Robert Agnich				
Results:	5-0 unanimously				Motion to approve
		Ayes:	-	5	Robert Agnich, Judy Pollock, Roger Sashinton, Rodney Milliken, and Jared Slade
		Against:	-	0	

Approval of the Board of Adjustment Panel C, November 13th, 2023 Minutes.

Motion was made to approve Panel C November 13th, 2023 Public Hearing minutes.

Maker:	Judy Pollock				
Second:	Robert Agnich				
Results:	5-0 unanimously				Motion to approve
		Ayes:	-	5	Robert Agnich, Judy Pollock, Roger Sashington, Rodney Milliken, and Jared Slade
		Against:	-	0	

UNCONTESTED ITEMS

1. 2518 N. Garrett Avenue

***This case was moved to Individual Items**
BDA223-108(DB)

BUILDING OFFICIAL’S REPORT: Application of Pedro Montoya represented by Jesse Castillo for (1) a variance to the off-street parking regulations at 2518 N. Garrett Ave. This property is more fully described as Block B/1992, Part of lot 1 and is zoned MF-2(A), which requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a residential structure with a setback of 10-feet, which will require (1) a 10-foot variance to the off-street parking regulations.

LOCATION: 2518 N. Garrett Ave.

APPLICANT: Pedro Montoya

Represented by: Jesse Castillo

REQUEST:

- (1) A request for a variance to the off-street parking 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:

- (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.

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:

Variance to the parking setback regulations:

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.
- B. Restrictive in area and size for the proposed development; 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.

Square Footage:

This lot contains 5000 square feet.

This lot is zoned MF-2A which requires a minimum lot area per dwelling unit. Applicant is proposing 3: 2-bedroom dwelling units therefore, they are required to have a minimum of 3600sf lot area to comply with lot size regulation.

Zoning:

Site: MF-2(A) Multifamily District
North: MF-2(A) Multifamily District
South: PD763 (MF-2(A) Multifamily District
East: MF-2(A) Multifamily District
West: MF-2(A) Multifamily District

Land Use:

The subject site is currently undeveloped with a proposed multifamily development. The areas to the north, south, east, and west are developed with duplex and multifamily uses.

GENERAL FACTS/STAFF ANALYSIS:

- A request for a 10-foot variance to the off-street parking regulation where a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from the street or alley.
- The applicant proposes to construct a residential structure with a setback of 10-feet, which will require a 10-foot variance to the off-street parking regulations.
- Applicant is proposing vehicular access from the alley; Applicant will discuss with public works the use/condition of the existing alley.
- Proposed development will require 7-parking spaces (1/bedroom (2-bdrm units), plus 1 guest parking)

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.

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

- That granting the variance to the off-street parking regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.

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- 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 10-foot variance to the off-street parking regulation(s) with a condition that the applicant complies with the most recently submitted plans, would require the proposal to be constructed as shown on the submitted documents.

Timeline:

October 5, 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 C.

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.

Speakers:

For: Jesse Castillo, 1801 Annex Ave # 104 Dallas TX 75204

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. **BDA 223-108**, on application of Pedro Montoya, **GRANT** the 10-foot variance to the off-street parking regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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.

Maker:	Jared Slade				
Second:	Judy Pollock				
Results:	5-0				Motion to grant
		Ayes:	-	5	Judy Pollock, Roger Sashington, Rodney Milliken, Jared Slade, and Andrew Finney
		Against:	-	0	

2. 3919 Furey Street

*This case was moved to Individual Items
BDA223-109(DB)

BUILDING OFFICIAL’S REPORT: Application of Juan Lopez for (1) a variance to the front-yard setback regulations at 3919 Furey St. This property is more fully described as Block 17/7146, Lot 1, and is zoned R-5(A), which requires a front yard setback of 20-feet. The applicant proposes to construct a single-family residential structure and provide a 5-foot front yard setback, which will require a (1) 15-foot variance to the front-yard setback regulations.

LOCATION: 3919 Furey

APPLICANT: Juan Lopez

REQUEST:

(2) A request for a 15-foot 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:

- (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.

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:

Variance to the front yard setback:

Approval

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

- D. **Not contrary to the public interest** as no letters of opposition were received.
- E. Subject lot is **restrictive in shape** and area due to the triangular configuration and the double frontage; therefore, the property cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- F. **Not a self-created** or personal hardship.

BDA HISTORY:

No BDA history within the last 5 years.

Square Footage:

This lot contains 5212 square feet.

This lot is zoned R5(A) which has an average area of 5,000 square feet.

Zoning:

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

Land Use:

The subject site is currently undeveloped with a proposed single-family development. The areas to the north, south, east, and west contain single-family uses as well as undeveloped land.

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the front yard setback regulations of 15-feet is made to construct and/or maintain a single-family residential structure.
- The applicant proposes to construct a single-family residential structure and provide a front yard setback of 5-feet.

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- The Dallas Development Code requires a 20-foot setback for required front yards in the R-5(A) zoning district.
- It is imperative to note that the subject property has a triangular configuration and must provide a 20-foot front yard setback on both street frontages which limits the buildable area; therefore, the property cannot be developed in a manner commensurate with development upon other parcels of land in 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:

- (f) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code.
- (g) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur.
- (h) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement.
- (i) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (j) the municipality considers the structure to be a nonconforming structure.

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

- That granting the variance to the off-street parking regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such 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 15-foot variance to the front yard setback regulation with a condition that the applicant complies with the most recently submitted plans, would require the proposal to be constructed as shown on the submitted documents.

Timeline:

- October 5, 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 C.
- 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

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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.

Speakers:

For: Juan Lopez, 2207 Langdon Ave Dallas TX 75235
(Interpreter) Jody DeLeon, 114 Donation Dr Tioga, TX 76271

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. **BDA 223-109**, on application of Juan Lopez, **GRANT** the 15-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 most recent version of all submitted plans are required.

Maker:	Judy Pollock				
Second:	Jared Slade				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Robert Agnich, Judy Pollock, Roger Sashinton, Rodney Milliken, Jared Slade
		Against:	-	0	

3. 2820 Gooch Street
BDA223-115(KMH)

BUILDING OFFICIAL'S REPORT: Application of Christopher Williams for (1) a variance to the front-yard setback regulations at 2820 Gooch St. This property is more fully described as Block J/6881, Lot 2, and is zoned R-7.5(A), which requires a front-yard setback of 25-feet. The applicant proposes to construct and/or maintain a single-family residential structure and provide a 20-foot front-yard setback, which will require (1) a 5-foot variance to the front-yard setback regulations.

LOCATION: 2820 Gooch St.

APPLICANT: Christopher Williams

REQUEST:

- (3) 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:

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

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:

Approval

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

- G. Not contrary to the public interest as no letters of opposition were received.
- H. Restrictive in area due to the slope on the property which limits the buildable area of the lot; therefore, the property cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.

- I. Not a self-created or personal hardship.

BDA HISTORY:

No BDA history found within the last 5 years.

Square Footage:

This lot contains 6553 square feet.

This lot is zoned R7.5(A) which has an average area of 7,500 square feet.

Zoning:

Site: R-7.5(A) Single-Family District
North: R-7.5(A) and R-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 with single-family uses.

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the front yard setback regulations of 5-feet is mad to construct and maintain a single-family residential structure.
- The subject site is currently being developed with a single-family dwelling unit.
- The Dallas Development Code requires a minimum front yard setback of 25-feet for the R-7.5(A) zoning district. The applicant is proposing to construct a single-family residential home only providing a 20-foot front yard setback; requiring a 5-foot variance to the front yard setback regulations.
- It is imperative to note that a building permit for new construction was applied for on August 30, 2021 and was approved on September 13, 2023. Unfortunately, this approval has been deemed as an oversight as there is a minimum 25-foot required front yard setback.
- However, there is a slope/drop at the rear of the property which could be viewed as a hardship on the property, which would limit the buildable area.

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:

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- (k) 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.
 - (l) 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.
 - (m) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement.
 - (n) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (o) the municipality considers the structure to be a nonconforming structure.
- BDA223-115; 2820 GOOCH (200' radius video)

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.
- October 25, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.
- 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 20, 2023: The applicant provided documentary evidence.
- November 29, 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: Joe Dingman, 2920 Forest Lane Dallas TX 75234

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:

BDA223-115 - Application of Christopher Williams for a 5-foot variance 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:	Rodney Milliken				
Second:	Judy Pollock				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Robert Agnich, Roger Sashington, Judy Pollock, Rodney Milliken, and Jared Slade
		Against:	-	0	

INDIVIDUAL CASES

4. 5829 Joyce Way
BDA223-103(KMH)

BUILDING OFFICIAL’S REPORT: Application of Charles Rahm for a variance to the side yard setback regulations at 5829 Joyce Way. This property is more fully described as Block 5610, and is zoned R-1ac(A), which requires a side yard setback of 10-feet. The applicant proposes to construct and/or maintain a single-family residential structure and provide a 9-foot side-yard setback, which will require a 1-foot variance to the side-yard setback regulations.

LOCATION: 5829 Joyce Way

APPLICANT: Charles Rahm

REQUEST:

- (4) 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:

- i. **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.
- ii. 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

- iii. **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:

Approval

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

- J. Not contrary to the public interest as no letters of opposition were received.
- K. Restrictive in area; in which the property cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.
- L. Not a self-created hardship.

BDA HISTORY:

No BDA history found within the last five years.

Square Footage:

This lot contains 35,887 square feet.

This lot is zoned R1ac which has an average area of 1 acre or 43,560 square feet.

Zoning:

Site: R-1ac(A) Single-Family District
North: R-1ac(A) and R-10(A) Single-Family Districts
South: R-1ac(A) Single-Family District
East: R-1ac(A) Single-Family District
West: R-1ac(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 with single-family uses.

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the side yard setback regulations of 1-foot is made to construct and/or maintain a single-family residential structure. The applicant is proposing to only provide a 9-foot side yard setback, whereas a minimum 10-foot side yard setback is required.
- The subject site is currently developed with a single-family dwelling unit.
- The applicant is proposing to expand an existing garage that currently sits within the side yard setback.
- Per the applicant, the purpose of the garage expansion is to shelter, provide security, and declutter the driveway of vehicles.
- As gleaned from the submitted site plan and as previously stated, the applicant is proposing to provide a 9-foot side yard setback for the expansion of an existing garage, which will require a 1-foot variance.

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

- That granting the variance to the side 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:

- (p) 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.
 - (q) 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.
 - (r) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement.
 - (s) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (t) the municipality considers the structure to be a nonconforming structure.
- Granting the proposed 1-foot variance to the side 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.
 - BDA223-103; 5829 JOYCE WAY (200' Radius Video)

Timeline:

September 26, 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 25, 2023: The Board of Adjustment Administrator assigned this case to Board of

BOARD OF ADJUSTMENT
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Adjustment Panel C.

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 20, 2023: The applicant provided documentary evidence for the board to consider.

November 29, 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: Charles Rahm, 5829 Joyce Way Dallas TX 75225

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. **BDA 223-103**, on application of Charles Rahm, **GRANT** the 1-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.

Maker:	Roger Sashington				
Second:	Rodney Milliken				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Robert Agnich, Judy Pollock, Rodney Milliken, Roger Sashington and Jared Slade
		Against:	-	0	

5. 915 Monte Vista Drive
BDA223-105(DB)

BUILDING OFFICIAL'S REPORT: Application of Nikie Kiani to appeal the decision of the administrative official at 915 Monte Vista Dr. This property is more fully described as Block 26/2226, Lot 22, and is zoned CD-6, which requires compliance with conservation district architectural standards. The applicant proposes to (1) appeal the decision of an administrative official in the denial of a CD work certificate.

LOCATION: 915 Monte Vista Dr.

APPLICANT: Nikie Kiani

REQUEST:

A request is made to appeal the decision of the administrative official, more specifically, the Building Official's authorized representative, the Chief Planner of Conservation Districts. The Chief Planner of Conservation Districts denied application CD22071601 to paint previously unpainted brick.

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).

BACKGROUND INFORMATION:

Zoning:

Site: CD-6 (Subdistrict tract 1)

North: CD-6 (Subdistrict tract 1)

South: CD-6 (Subdistrict tract 1)

East: CD-6 (Subdistrict tract 1)

West: CD-6 (Subdistrict tract 1)

Land Use:

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

BDA History:

No BDA history within the last five years.

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:

September 13, 2023: The applicant was sent a denial letter for CD22071601 application to paint previously unpainted brick.

September 29, 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 Secretary randomly assigned this case to Board of Adjustment Panel C.

October 26, 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 November, 20th deadline to submit additional evidence for staff to factor into their analysis; and the 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 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: Nikie Kiani, 915 Monte Vista Dr Dallas TX 75223

Against: No Speakers

BOARD OF ADJUSTMENT
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Motion

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. **BDA 223-105**, on application of Nikie Kiani, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment affirm the decision of the administrative official and **DENY** the relief requested by the applicant.

Maker:	Jared Slade				
Second:	Robert Agnich				
Results:	4-1				Motion to deny
		Ayes:	-	4	Robert Agnich, Rodney Milliken, Roger Sashington and Jared Slade
		Against:	-	1	Judy Pollock

6. 915 Monte Vista Drive
BDA223-FR2(DB)

BUILDING OFFICIAL'S REPORT: Application of Nikie Kiani to appeal the decision of the administrative official at 915 Monte Vista Dr.

LOCATION: 915 Monte Vista Dr.

APPLICANT: Nikie Kiani

REQUESTS:

The applicant is requesting a fee reimbursement for an appeal the decision of the administrative official.

STANDARD FOR A FEE WAIVER OR REIMBURSEMENT:

Section 51A-1.105(b)(6) of the Dallas Development Code specifies the board of adjustment may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant. The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination. If the issue is placed on the miscellaneous docket, the applicant may not apply to the merits of the request for a waiver have been determined by the board. In making this determination, the board may require the production of financial documents.

STAFF RECOMMENDATION:

The staff does not make a recommendation on fee waiver requests since the standard is whether the board finds that payment of the fee would result in substantial financial hardship to the applicant.

Speakers:

For: Nikie Kiani, 915 Monte Vista Dr Dallas TX 75223

Against: No Speakers

BOARD OF ADJUSTMENT
December 11, 2023

Motion

I move that the Board of Adjustment, in Appeal No. **BDA 223-FR2**, on application of Nikie Kiani, **GRANT** the request to waive the filing fees to be paid in association with a request for an appeal of a decision made by the administrative official as requested by this applicant because our evaluation of the property and testimony shows that the payment of the fee would result in substantial financial hardship to this applicant.

Maker:	Jared Slade			
Second:	Judy Pollock			
Results:	5-0 Unanimously			Motion to grant
		Ayes:	- 5	Robert Agnich, Judy Pollock, Rodney Milliken, Roger Sashington and Jared Slade
		Against:	- 0	

Recess: 2:11 p.m.; Resume: 2:24 p.m.

ADJOURNMENT

After all business of the Board of Adjustment had been considered, Vice-Chair Agnich moved to adjourn the meeting at **3:46 P.M.**



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

2/22/24

Date



Required Signature:
Jason Pool, DEV Administrator
Development Services Dept.

2/22/24

Date



Required Signature:
Robert Agnich, Vice-Chair
Board of Adjustment

2.24.2024

Date