

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
MONDAY, DECEMBER 13, 2021**

MEMBERS PRESENT AT BRIEFING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Judy Pollock, regular member, Thomas Fleming, alternate member, Jared Slade, alternate member

MEMBERS ABSENT FROM BRIEFING: None

MEMBERS PRESENT AT HEARING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Judy Pollock, regular member, Thomas Fleming, alternate member, Jared Slade, alternate member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Attorney, Pamela Daniel, Senior Planner, Robyn Gerard, Senior Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, David Nevarez, Senior Traffic Engineer, Phil Erwin, Arborist and Andreea Udrea, Assistant Director

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Attorney, Pamela Daniel, Senior Planner, Robyn Gerard, Senior Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, David Nevarez, Senior Traffic Engineer, Phil Erwin, Arborist and Andreea Udrea, Assistant Director

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, **December 13, 2021 docket.**

BOARD OF ADJUSTMENT ACTION: December 13, 2021

1:06 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.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, November 15, 2021 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: December 13, 2021

MOTION: Sashington

Approval of the Board of Adjustment Panel C, November 15, 2021 public hearing minutes.

SECONDED: Agnich

AYES: 5 – Brooks, Slade, Pollock, Agnich, Sashington

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Approval of the 2021 Annual Report

BOARD OF ADJUSTMENT ACTION: December 13, 2021

MOTION: Agnich

Approval of the 2022 Board of Adjustment Calendar with revisions:

(Removal of 1/11/22 Special call Meeting date and to replace the dates of 11/21-11/23/22 to 11/14-11/16/22)

SECONDED: Sashington

AYES: 5 – Brooks, Slade, Pollock, Agnich, Sashington

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-114(JM)

BUILDING OFFICIAL'S REPORT: Application of Rob Baldwin of Baldwin Associates to restore lost delta credits at 1921 Greenville Avenue Ste. 200. This property is more fully described as Lot 18 and part of Lot 19, Block C/1983, and is zoned Planned Development District No. 842 with an MD-1 Modified Delta No. 1 Overlay, in which the right to nonconforming delta parking credits is lost if the use is vacant for 12 months or more. The Board may grant a special exception to this provision only if the owner can demonstrate there was not an intent to abandon the use. The applicant proposes to restore the lost delta credits.

LOCATION: 1921 Greenville Avenue, Suite 200

APPLICANT: Rob Baldwin of Baldwin Associates

REQUEST:

A request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the personal service uses on the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for an office use in two vacant suites (upper units) in a commercial structure.

STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKNG AND LOADING SPACES UNDER THE DELTA THEORY WHEN A USE IS DISCONTINUED OR REMAINS VACANT FOR 12 MONTHS OR MORE:

The Modified Delta Overlay District No. 1 states that the right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include *but not be limited* to the following:

1. A decline in the rental rates for the area which has affected the rental market.
2. An unusual increase in the vacancy rates for the area which has affected the rental market.
3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

STAFF RECOMMENDATION:

Approval

Rationale:

- Staff concluded that the applicant had demonstrated that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of the following extreme circumstances:

The applicant documented how the suites remained occupied despite tenants failing to apply for change of owner/tenant COs through evidence provided including contracts/lease and termination documents and utility bills.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 842 with MD Overlay District No. 1
North: PD No. 842 with MD Overlay District No. 1
South: PD No. 842 with MD Overlay District No. 1
East: PD No. 842 with MD Overlay District No. 1
West: PD No. 842 with MD Overlay District No. 1

Land Use:

The subject site is developed with a commercial structure. The areas to the north, east, and south, are developed with commercial uses; and the area to the west is developed with surface parking.

Zoning/BDA History:

While there have been two BDA cases and no relevant zoning cases within the area in the last five years.

1. **BDA178-009:** On Wednesday, January 17, 2018, Panel B of the Board of Adjustment approved a special exception to reinstate delta credits at 1917 Greenville Avenue (south of the subject site).
2. **BDA190-025:** On Tuesday, February 15, 2020, Panel A of the Board of Adjustment approved a front yard variance request at 2026 Greenville Avenue (east of the subject site).

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on carrying forward nonconforming parking spaces under the delta theory terminated because a part of the structure/use on the site was discontinued or remained vacant for 12 months or more. Reinstating the delta credits would allow for the applicant to obtain a Certificate of Occupancy for an office use proposed in the two upstairs suites. The delta credits are currently in question due to the period of vacancy discovered since the prior tenant.

The subject site is zoned Planned Development District No. 842 with Modified Delta Overlay District No.1. According to DCAD, the property at 3016 Greenville Avenue is developed with a “retail strip” with over 12,210 square feet of floor area built in 1930.

The Dallas Development Code provides the following relating to nonconformity of parking or loading:

- Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional off-street parking and loading spaces are provided.
- Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner: required parking or loading spaces for existing use minus the number of existing parking or loading spaces for existing use equals nonconforming rights as to parking or loading.
- Decreased requirements. When a use is converted to a new use having less parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.

In 1987, the City Council created “Modified Delta Overlay Districts” in those areas where it has determined that a continued operation of the delta theory is not justified because there is no longer a need to encourage redevelopment and adaptive reuse of existing structures, or a continued application of the delta theory will create traffic congestion and public safety problems and would not be in the public interest.

In a modified delta overlay district, the city council may limit the number of percentages of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.

An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to **any portion** of the nonconforming parking or loading **not needed** to meet the new requirements **are lost**.

An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.

In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in the Community Retail District with an MD Overlay District No. 1a is expanded.

In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
 1. A decline in the rental rates for the area which has affected the rental market.
 2. An unusual increase in the vacancy rates for the area which has affected the rental market.
 3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

Per DCAD, the property contains a two-story retail strip with over 13,500 square feet of floor area constructed in 1924 with a portion of the top story containing 1,650 square feet constructed in 1933. The site is situated on the west side of Greenville Avenue, south of Sears Street. The retail strip accommodates six suites with a variety of retail and personal service uses. The applicant proposes to operate an office use within 1921 Greenville Suite 200, the entire upstairs portion of the structure.

If the board were to grant the special exception to reinstate the delta credits, no specific number of credits shall be indicated. The credits will be determined during the permitting process through the Development Services Department.

Timeline:

- October 4, 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.
- November 12, 2021: The Board Administrator assigned this case to Board of Adjustment Panel B.
- November 23, 2021: The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the 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.”
- November 23, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).
- November 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. The review team members in attendance included the Planning and Urban Design: Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner/Development Code Specialist, Senior Engineer, the Board of Adjustment Senior Planner, the and the Assistant City Attorney to the Board.
- November 30, 2021: Additional evidence was submitted for consideration (**Attachment B**).
- December 1, 2021: Additional evidence was submitted for consideration (**Attachment C**).

BOARD OF ADJUSTMENT ACTION: December 13, 2021

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. Ste. B Dallas, TX
Jon Hetzel 2622 Commerce St. Dallas, TX

APPEARING IN OPPOSITION: Michael Northrup 5703 Goliad Ave. Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX

MOTION: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 201-114, on application of Rob Baldwin of Baldwin Associates, **grant** the special exception to carry forward nonconforming parking

spaces requested by this applicant because our evaluation of the property and the testimony shows that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance including:

1. A decline in the rental rates for the area which has affected the rental market;
2. An unusual increase in the vacancy rates for the area which has affected the rental market;
3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties is affecting the marketability of the property.
4. COVID-19.

SECONDED: Sashington

AYES: 5 – Fleming, Slade, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-115(PD)

BUILDING OFFICIAL’S REPORT: Application of Gaba Group LLC and Aaron Galvan for a variance to the side yard setback regulations at 901 Elsbeth Avenue. This property is more fully described as Lot 6, within Block 10/3332, and is zoned Tract IC within Planned Development District No. 160, which requires a side yard setback of five feet. The applicant proposes to construct and maintain a residential structure and provide a three-foot eight-inch side yard setback, which will require a one-foot four-inch variance to the side yard setback regulations.

LOCATION: 901 Elsbeth Avenue

APPLICANT: Gaba Group LLC and Aaron Galvan

REQUESTS:

The applicant proposes to construct and maintain an approximately 2,124-square-foot single-family dwelling unit and provide a one-foot four-inch side yard setback.

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:

- not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done;
- necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be

developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

- not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

State Law/HB 1475 effective 9-1-21

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

STAFF RECOMMENDATION (both variances):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Per evidence (**Attachment A**) submitted, staff concludes that the subject site is unique and different from most lots in PDD No. 160 which defaults to the R-7.5(A) Single Family District regulations. The evidence provided a comparison of eight lots with two meeting the minimum lot area and six being larger than the subject property. These eight lots provide structures with floor areas greater than the 2,124 square feet being sought and is slightly larger at 418 square feet than the average floor area of 1,706 square feet. As such the lot is restrictive in area, since the subject site provides only 7,291 square feet in area. Thus, the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

BACKGROUND INFORMATION:

Zoning: all within PDD No. 193 with a D Liquor Control Overlay

<u>Site</u>	Tract IC in PDD No. 160
<u>North:</u>	Tract IC in PDD No. 160
<u>Northwest:</u>	Subdistrict E -Tract 4_Area 1 in PDD No. 468
<u>Southwest:</u>	Subdistrict E-Tract 4_Area 2 in PDD No. 468

South: Tract IC in PDD No. 160
Southwest: Tract I IC w/in PDD No. 160
Northwest: Tract IC w/in PDD No. 160

Land Use:

The subject site is developed with a single-family dwelling undergoing a remodel. The surrounding properties are developed with residential uses consisting of single-family dwelling units to the north, south, and southwest with an undeveloped tract immediately adjacent to the west. The properties to the northwest and southwest are developed with multifamily 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 request for a variance to the side yard setback focuses on constructing and maintaining an approximately 2,124-square-foot single-family dwelling unit and to provide a one-foot four-inch side yard setback along the eastern portion of the structure fronting along Elsbeth Avenue.

DCAD records indicate that the subject property was developed in 1924 with an approximately 1,900-square-foot, one-story single-family dwelling unit and an approximately 400-square-foot, detached garage was constructed in 1945. In November of 2020, a remodel permit was obtained to renovate the interior and exterior of the structure, yet a subsequent inspection found that the single-family structure had been demolished to the piers and would require a new construction permit. The property is proposed to be developed with an approximately 2,124-square-foot, one-story single-family dwelling unit, one approximately 424-square-foot detached garage, and one approximately 144-square-foot detached gazebo for a total of 2,692-square feet of floor area. Additionally, the subject property contains approximately 7,525 square feet in area and is situated along a corner lot.

Section 51P-160(a)(2) states that in Tract IC, the following minimum side yard setback must be provided for detached single-family dwelling units:

(A) A minimum side yard setback of five feet is required for detached single-family dwelling units. Attached single-family dwelling units must have one side yard setback of five feet.

The above section of the code ensures that a minimum setback of five feet is required along both side yards. Since the western portion of the subject site fronting along West 6th Street proposes to provide a side yard setback of eight-feet three-and-three-quarter-inch side yard setback, only the eastern portion of the structure requires relief.

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

- That granting the variance to the side yard regulations for a single-family use 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 December 3, 2021, no letters have been submitted in support of or in opposition to the request.

If the board grants the variance to the side yard setback and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on the plan. However, granting the request will not provide any relief to the Dallas Development code regulations.

Timeline:

October 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.

Nov. 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.

Nov.12, 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 November 23, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the December 3, 2021 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.

Nov. 22, 2021: Documentary evidence was provided by the applicant (**Attachment A**).

Nov. 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney

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

Nov. 30, 2021: Documentary evidence was provided by the applicant (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: December 13, 2021

APPEARING IN FAVOR: Aaron Galvan 3621 Harbor Dr. Dallas, TX

APPEARING IN OPPOSITION: Laura Palmer 911 N Madison Ave. Dallas, TX
Socorro Hernandez 907 Elsbeth Dallas, TX
Belen Hernandez 907 Elsbeth Dallas, TX

MOTION: Sashington

I move that the Board of Adjustment, in Appeal No. BDA 201-115, on application of Gaba Group, LLC and Aaron Galvan, **grant** the three-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: 5 – Fleming, Slade, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

FILE NUMBER: BDA201-116(PD)

BUILDING OFFICIAL'S REPORT: Application of Dustin Lauderdale for a variance to the side yard setback regulations at 3925 & 3927 Prescott Avenue. This property is more fully described as Lot 26, within Block 10/2038, and is zoned an MF-1 Multiple Family Subdistrict within Planned Development District No. 193, which requires a side yard setback of five feet. The applicant proposes to construct and maintain a duplex residential structure and provide a three-foot six-inch side yard setback, which will require a one-foot six-inch variance to the side yard setback regulations.

LOCATION: 3925 & 3927 Prescott Avenue

APPLICANT: Dustin Lauderdale

REQUESTS:

The applicant proposes to construct and maintain an approximately 7,864-square-foot duplex and provide a one-foot six-inch side yard setback along both side yards to accommodate two chimneys.

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:

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

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (f) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (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 consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION (both variances):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Per evidence (**Attachment A**) submitted and State Law/HB1475 Subsection B the financial cost of compliance is greater than 50 percent of the appraised value of the structure as provided as shown on the cost estimate. The structure was permitted for construction in January 2021 and the appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code will not assess an appraisal value until 2022 when the new tax roll is provided. Thus, the contractor lists the improvement value of the newly constructed structure at \$965,024.12 with an estimated cost of \$1,150,000.00 to demolish the existing structure and foundation for a total loss to comply with the development code.

BACKGROUND INFORMATION:

<u>Site</u>	MF-1 Subdistrict in PDD No. 193
<u>North:</u>	MF-1 Subdistrict in PDD No. 193
<u>East:</u>	MF-1 Subdistrict in PDD No. 193
<u>South:</u>	PDS No. 52 in PDD No. 193
<u>West:</u>	MF-1 Subdistrict in PDD No. 193

Land Use:

The subject site is developed with two attached single-family dwellings (a duplex). The surrounding properties are developed with duplex uses to the north, east and west, and a public-school use to the south.

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 request for a variance to the side yard setback focuses on constructing and maintaining an approximately 7,864-square-foot two-story, duplex structure. The request for a variance to the side yard setback is sought to allow a one-foot six-inch side yard setback along the western and eastern portions of the structure fronting along Prescott Avenue.

Internal records indicate that the subject property was permitted for construction on January 20, 2021 in error. As depicted by the proposed site plan, the site contains two, two-story attached residential dwellings with two attached two-car garages along the front yard and two attached covered terraces. As depicted on the proposed site plan, the property provides a five-foot side yard setback as regulated by the code, however, an approximately ten-square-foot chimney encroaches three-feet-six-inches into the side yard setback approximately 98-feet from the front property line. The structure has been constructed and only requires completion of finishes and landscape.

According to 51P-193.125, the schedule for yard, lot, and space requirements in the MF-1 Multiple Family Subdistrict, the minimum required side yard setback is five feet for each side yard.

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

- That granting the variance to side yard regulations for the residential structure 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 December 3, 2021, one letter has been submitted in opposition of the request and no letters have been submitted in support of the request.

If the board grants the variance to the side yard setback and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on the plan. However, granting the request will not provide any relief to the Dallas Development code regulations.

Timeline:

- October 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.
- Nov. 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.
- Nov.12, 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 November 23, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the December 3, 2021 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.
- Nov. 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. The review team members in attendance included: the Planning and

Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No review comment sheets were submitted in conjunction with this application.

December 2, 2021: Documentary evidence was provided by the applicant (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: December 13, 2021

APPEARING IN FAVOR: Dustin Lauderdale 6415 Stitcher Ave. Dallas, TX
Clark Lauderdale 6415 Stitcher Ave. Dallas, TX

APPEARING IN OPPOSITION: Jeff Hall 1700 Pacific Ave. #475 Dallas, TX
Doug Jeffcoats 3929 Prescott Dallas, TX
Maryanne Cowdrey 3913 Prescott Ave. Dallas, TX
Donald Word 5020 Lilac Lane Dallas, TX
Delbert Thomas 3931 Prescott Ave. Dallas, TX
Michael Coker 3111 Canton St. Dallas, TX

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 201-116 on application of Dustin Lauderdale, **grant** the request of this applicant for a one-foot six-inch variance to the side yard setback regulations contained in the Dallas Development Code, as amended, 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: Pollock

AYES: 4 – Fleming, Slade, Pollock, Sashington

NAYS: 1 - Agnich

MOTION PASSED: 4–1

FILE NUMBER: BDA201-117(PD)

BUILDING OFFICIAL’S REPORT: Application of Daniel Simone for a special exception to the single-family regulations, and for a variance to the floor area ratio regulations at **6664 Santa Anita Drive**. This property is more fully described as Lot 3, Block 12/5424, and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one and requires that an accessory structure may not exceed 25 percent of the floor area of the main structure. The applicant proposes to construct and maintain an accessory structure to be used as an additional dwelling unit (not for rent) with 470 square feet of floor area (34.4 percent of the

1,370-square-foot floor area of the main structure), which will require a special exception to the single-family use zoning regulations and a 156-square-foot variance to the floor area ratio regulations.

LOCATION: 6664 Santa Anita Drive

APPLICANT: Daniel Simone

REQUESTS:

The following request for a special exception to the single-family use regulations is made to permit a second additional dwelling unit (not for rent) on one single-family lot. Additionally, a request for a variance request is made to permit the proposed ADU to exceed the maximum 25 percent floor area of the main structure.

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

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

(aa) be used as rental accommodations; or

(bb) adversely affect neighboring properties.

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

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

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

STANDARD FOR A VARIANCE:

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

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

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (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 consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval, subject to compliance:

Rationale:

Upon review of evidence submitted by the applicant (**Attachment A**), staff concluded that the subject site is unique and different from eight other properties with the same zoning of R-7.5(A) Single Family District. Considering its restrictive lot area of 8,929 square feet in comparison to the average of 11,631 square feet, the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5(A) (Single Family District)
<u>North:</u>	R-7.5(A) (Single Family District)
<u>West:</u>	R-7.5(A) (Single Family District)
<u>South:</u>	R-7.5(A) (Single Family District)
<u>East:</u>	R-7.5(A) (Single Family District)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The requests for a special exception to the single-family use regulations and a variance to the maximum floor area ratio regulations focus on constructing and maintaining a 470-square-foot additional dwelling unit (not for rent) ADU to be constructed along the southeastern portion of the site approximately eight feet from the side yard setback. The subject site fronts along Santa Anita Drive and contains approximately 8,929 square feet in lot area. The site is zoned an R-7.5(A) Single Family District where lots are a minimum of 7,500 square feet in area. The property contains an approximately 1,370-square-foot, one-story existing dwelling unit constructed in 1954. Additional structures include a 529-square-foot one-story detached garage and a second 308-square-foot one-story wood frame garage.

In this district, one dwelling unit is allowed per lot which is why the applicant is requesting a special exception to allow a non-rentable ADU. An ADU is an accessory structure and cannot exceed 25 percent of the maximum floor area of the main structure.

The site plan and elevation plan provided depict the proposed ADU situated approximately 18 feet from the rear of the existing one-story single-family dwelling unit. The ADU is proposed to be constructed within the footprint of the existing one-story, 308-square-foot detached garage. The detached garage is proposed to be remodeled and a second story constructed atop of the existing one-story detached garage structure containing approximately 470-square-feet with a maximum height of nineteen-feet-six inches.

Evidence (**Attachment A**) was submitted comparing the lot average and maximum floor area of eight lots. The evidence reflects that of the eight lots a delta of 2,702 square feet exists with the average lot area being 11,631 square feet and the subject site containing 8,929 square feet. Additionally, the eight lots compared provide a maximum floor area of 1,809 square feet for all structures while the subject site contains a maximum floor area of 1,370 square feet. If approved, a maximum floor area of 1,840 square feet will exist on the subject site which is smaller than four properties utilized in the comparison.

The applicant has the burden of proof in establishing that the proposed ADU not for rent to be constructed, installed, and/or maintained on the site will not be used as rental accommodation or adversely affect neighboring properties. In granting a special exception under this subparagraph, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

Additionally, the applicant has the burden of proof in establishing the following:

- That granting the variance 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 December 3, 2021, no letters had been submitted in support of the requests nor in opposition of the requests.

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

If the board were to grant the special exception to the single-family regulations to construct and maintain a two-story additional dwelling unit (not for rent) and allow the ADU, 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.

Furthermore, if the board were to grant the variance to the single-family use regulations to construct and maintain the accessory structure with 470 square feet floor area (34.4 percent of the 1,370-square-foot floor area of the main structure) which will require a 156-square-foot variance to the floor area ratio and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on this document.

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 if each is approved by the board.

Timeline:

October 22, 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.

November 12, 2021: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 12, 2021: The Board 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 November 23, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the December 3, 2021 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 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December 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.

December 3, 2021: Documentary evidence was provided by the applicant (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: December 13, 2021

APPEARING IN FAVOR: Daniel Simone 4322 Throckmoton St. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION#1: Slade

I move that the Board of Adjustment, in request No. BDA 201-117, on application of Daniel Simone, **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:

Compliance with the submitted site plan is required.

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

SECONDED: Agnich

AYES: 5 – Fleming, Slade, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

MOTION#2: Slade

I move that the Board of Adjustment, in Appeal No. BDA 201-117, on application of Daniel Simone, **grant** the 156-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: Agnich

AYES: 5 – Fleming, Slade, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

FILE NUMBER: BDA201-118(PD)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin of Baldwin Associates for a special exception for tree preservation to the side yard setback regulations at **8115 San Benito Way**. This property is more fully described as Lot 10, Block 21/5272, and is zoned Subarea C within Planned Development District No. 575, which requires side yard setback of six feet. The applicant proposes to construct a single-family residential accessory structure and provide a two-foot eight-inch side yard setback, which will require a three-foot four-inch special exception for tree preservation to the side yard setback regulations.

LOCATION: 8115 San Benito Way

APPLICANT: Rob Baldwin, Baldwin Associates

REQUEST:

A request for a special exception to the minimum side yard requirements to preserve five existing trees is made to construct and maintain an approximately 1,704-square-foot accessory structure (detached one-story garage) on a property that is developed with a single-family home.

STANDARD FOR A SPECIAL EXCEPTION TO THE MINIMUM FRONT YARD REQUIREMENTS TO PRESERVE AN EXISTING TREE:

Section 51(A)-4.401(d) of the Dallas Development Code specifies that the board may grant a special exception to the minimum front yard requirements in this section to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the requested special exception was compatible with the character of the neighborhood; the value of surrounding properties will not be adversely affected; and that, according to the City of Dallas Chief Arborist, the trees denoted on the submitted site plan, are worthy of preservation.

BACKGROUND INFORMATION:

Zoning:

- Site: Subdistrict C in PDD No. 575
- North: Subdistrict C in PDD No. 575
- South: Subdistrict C in PDD No. 575
- East: Subdistrict C in PDD No. 575
- West: Subdistrict C in PDD No. 575

Land Use:

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

Zoning/BDA History: There have been no related board or zoning cases in the vicinity in the last five years

GENERAL FACTS /STAFF ANALYSIS:

This request for a special exception to the minimum side yard requirements to preserve five existing trees is made to construct and maintain an approximately 1,704-square-foot accessory structure (a detached, one-story garage) and provide a two-foot eight-inch side yard setback.

The property is zoned Subdistrict C in Planned Development District No. 575, which reverts to Chapter 51A and requires compliance with an R-10(A) Single Family District and requires a side yard setback of six feet for all structures.

The submitted site plan depicts a proposed 1,704-square-foot accessory structure proposed along the side yard which is constructed with a gravel driveway with access from San Benito Way. The tree exhibit depicts three trees along the side yard setback and the driveway. The tree species are Hackberry with calipers that vary between 12.5 caliper inches and 21.5 caliper inches and in good health. Two interior trees exist 32 feet from the side yard setback and one interior tree exists 22-and-one-third inch from the side yard setback. The two tree species proposed to be preserved are Red Oak trees with calipers between 11.5 and 13 inches while

the tree proposed to be removed that will restrict the construction of the accessory structure is a Pecan tree species consisting of 23 caliper inches.

The assessment of a tree, or trees, to be preserved for the special exception for a side yard entails a review of six trees identified by City arborist, Ms. Tina Standeford for the applicant. Thus, the below statement is based on the details from the November 29, 2021, arborist's memorandum, and her opinion of site conditions.

The City of Dallas Arborist submitted a memo regarding this request (**Attachment A**) and stated the following: "The City Arborist investigation was completed by the district arborist, Tina Standeford. Her comments in reference to the Tree Exhibit are as follows:

Trees #13, #15, and #16 are in great shape and worthy of preservation. Trees #15 and #16 are pruned to a height to clear the carport so should be in the right shape to fit between the house and new garage. Care would need to be taken to protect the trees during the foundation installation though. The trees in proximity to the proposed structure are worthy of preservation."

The proposed garage requested under the special exception would have the potential for a significant impact on the roots of two trees (#13, #15 and #16) in the report. The ability to sustain the trees throughout and after construction would likely be based on the construction methods employed to construct in the proposed location. Therefore, the three trees are considered worthy of preservation.

Tree #14 is not mentioned in the arborist's report, however, the owner desires to remove the tree since, "the tree's particular growth habit leans toward the home and the homeowner has considered removing the tree to prevent potential damage to the home in the future."

All healthy protected trees are regulated under the permit and replacement requirements of the district. The owner may only remove trees for construction with an approved tree removal application. The property is not subject to Article X tree conservation regulations.

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

- Whether the requested special exception is compatible with the character of the neighborhood.
- Whether the value of surrounding properties will be adversely affected.
- Whether the tree is worthy of preservation.

As of December 3, 2021, no letters had been submitted in support of the requests nor in opposition of the requests.

If the board were to grant the special exception request and impose the submitted site plan as a condition, the structure in one of the two side yard setbacks would be limited to what is shown on this document.

Timeline:

October 22, 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.

Nov. 12, 2021: The Board of Adjustment Secretary assigned this case to the Board of Adjustment Panel C.

Nov. 12, 2021: The Sustainable Development and Construction Department 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 November 23, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the December 3, 2021 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.

Nov. 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No review comment sheets were submitted in conjunction with this application.

Nov. 29, 2021: The City of Dallas Chief Arborist emailed the Board Administrator information regarding this application (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: December 13, 2021

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. Ste. B Dallas, TX
Bradley Almond 8115 San Benito Way Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Sashington

I move that the Board of Adjustment, in Appeal No. BDA 201-118, on application of Rob Baldwin, **grant** the special exception for tree preservation to the side yard setback regulations in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Agnich

AYES: 5 – Fleming, Slade, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

FILE NUMBER: BDA201-119(PD)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin of Baldwin Associates for a variance to the front yard setback regulations at 5302 Belmont Avenue. This property is more fully described as Lot 1, Block 3/1975, and is zoned an R-7.5(A) Single Family District, which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a single-family residential structure and provide a 10-foot front yard setback, which will require a 15-foot variance to the front yard setback regulations.

LOCATION: 5302 Belmont Avenue

APPLICANT: Rob Baldwin of Baldwin Associates

REQUESTS:

A request for a variance to the front yard setback regulations of fifteen feet is made to construct and maintain a single-family dwelling within the subject site’s 25-foot front yard setback on Madera Street. The property is currently developed and situated along a corner lot with two front yards.

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:

- not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

- not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (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 consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site being situated on a corner lot encumbered by two front yards determines this property has an unnecessary hardship and is unable to be developed in a manner commensurate with the development upon 16 other parcels of land with the same R-7.5(A) zoning classification, per evidence (**Attachment A**) submitted by the representative.

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 is developed with a single-family dwelling. Surrounding properties to the north, east, and south are developed with single-family dwellings while surrounding properties to the west is an undeveloped tract and a tract developed with a single-family dwelling.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on constructing and maintaining a single-family dwelling unit that is situated along a front yard (Madera Street). The lot is situated at the intersection of Madera Street and Belmont Avenue, which provides two front yard, one along each corridor. Since the subject site is zoned an R-7.5 Single Family District, a 25-foot front yard setback must be maintained along both frontages to ensure continuity of the block.

A site plan has been submitted denoting the proposed single-family dwelling located ten feet from the front property line along Madera Street and containing approximately 3,265 square feet of floor area. The portion of the single-family structure fronting along Belmont Avenue is not proposed to encroach into the front yard setback and will provide the front yard setback of 25 feet and one inch.

The subject site is not irregular in shape and is approximately 7,500 square feet in lot area. An R-7.5(A) zoning district requires lots to have a minimum lot size of 7,500 square feet. However, the applicant has provided evidence (**Attachment A**) that reflects the decrease in buildable lot area of 30 percent due to the double frontage. The evidence provides an analysis of 16 comparative lots with an average floor area of approximately 2,342 square feet while the existing floor area for the subject site is approximately 1,747 square feet which is a delta of 595 square feet. Additionally, the evidence provided an average of the lot area and living area of twelve lots. The evidence yielded an average lot area of 7,622 square feet while the subject site is only 7,500 square feet and an average living area of 3,976 square feet while the applicant proposes to only develop 3,265 square feet.

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

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

Additionally, the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- 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;
- 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;
- Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- The municipality consider the structure to be a nonconforming structure.

As of December 3, 2021, no letters have been submitted in support of or in opposition of the request.

If the board were to grant this front yard setback variance request and impose the submitted site plan as a condition, development would be limited to what is shown on this document. Granting this variance request will not provide any further relief from the Dallas Development Code regulations.

Timeline:

October 22, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

November 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.

November 12, 2021: The Board 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 November 23, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the December 3, 2021 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 23, 2021: Documentary evidence was provided by the representative (**Attachment A**).

November 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing.

The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: -December 13, 2021

APPEARING IN FAVOR: Rnb Baldwin 3904 Elm St. Ste B. Dallas, TX
Nancy Oniskn 2410 Madera St. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Sashington

I move that the Board of Adjustment, in Appeal No. BDA 201-119, on application of Rob Baldwin, grant the variance to the front yard setback regulations in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Agnich

AYES: 5 – Fleming, Slade, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 - 0

MOTION: Agnich

I move to adjourn the Panel C hearing.

SECONDED: Sashington

AYES: 5 – Fleming, Slade, Pollock, Agnich,

Sashington **NAYS:** 0 -

MOTION PASSED (unanimously): 5 - 0

Recess: 2:46 p.m.

Resume: 3:00 p.m.

The meeting was adjourned at 4:03 P.M. on December 13, 2021.



CHAIRPERSON -signed 3-24-22



BOARD ADMINISTRATOR



BOARD SECRETARY

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