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BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE/6ES
TUESDAY, AUGUST 16, 2022

CITY SECRETARY
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: David A. Neumann, Chair, regular member, Jay Narey, regular member, Lawrence Halcomb, regular member, Kathleen Frankford, regular member and Nick Brooks, alternate member

MEMBERS ABSENT FROM BRIEFING: None

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., LaTonia Jackson, Board Secretary, Sarah May, Chief Planner, Jason Pool, Senior Planner/Sign Code Specialist, David Nevarez, Senior Traffic Engineer, Phil Erwin, Arborist

MEMBERS PRESENT AT HEARING: David A. Neumann, Chair, regular member, Jay Narey, regular member, Lawrence Halcomb, regular member, Kathleen Frankford, regular member and Nick Brooks, alternate member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., LaTonia Jackson, Board Secretary, Sarah May, Chief Planner, Jason Pool, Senior Planner/Sign Code Specialist, David Nevarez, Senior Traffic Engineer, Phil Erwin, Arborist

9:07 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's August 16, 2022 docket.

12:16 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 July 19, 2022 Board of Adjustment Panel A Public Hearing Minutes

BOARD OF ADJUSTMENT ACTION: August 16, 2022

MOTION: Narey

Approval of the July 19, 2022 Board of Adjustment Panel A Public Hearing Minutes

SECONDED: Frankford

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

BDA212-048(JM)

1108 Quaker St.

REQUEST: Application of Michael Cohen for a special exception to the parking regulations. **Submission of site parking analysis to Panel A for reassessment of the conditions.**

BOARD OF ADJUSTMENT ACTION: August 16, 2022

The Board of Adjustment, in BDA 190-048, on application of Michael Cohen for a special exception to the parking regulations, reviewed the submitted parking study and **affirmed** the request to the off-street parking regulations for a commercial amusement (inside) use only subject to the following condition:

1. The special exception of 43 spaces shall automatically and immediately terminate if and when the commercial amusement (inside) use is changed or discontinued.
2. The applicant or property owner must submit a parking analysis of the site to the Board of Adjustment no later than June 23, 2020 for a reassessment of the conditions. **COMPLETED.**

****There was no motion entertained regarding the special exception which affirmed the initial decision for the special exception to continue****

FILE NUMBER: BDA212-FW4

BUILDING OFFICIAL’S REPORT: Application of Victor Morales for a special exception to the fence standards regulations and a special exception to the visibility obstruction regulations at 2603 Hondo Avenue.

LOCATION: 2603 Hondo Avenue

APPLICANT: Victor Morales

REQUESTS:

The applicant is requesting a fee reimbursement for special exceptions to the fence height regulations and visibility triangle regulations at the driveway which appeared before Panel A on April 19, 2022.

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.

BOARD OF ADJUSTMENT ACTION: August 16, 2022

APPEARING IN FAVOR: Victor Morales 2603 Hondo Ave. Dallas, TX

APPEARING IN OPPOSITION:

MOTION: Halcomb

I move that the Board of Adjustment, in Appeal No. BDA 212-FW4, on application of Victor Morales, **grant** the request to waive the filing fees paid in association with a request for a special exception to the visibility obstruction regulations 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.

SECONDED: Brooks

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA212-067(PD)

BUILDING OFFICIAL'S REPORT: Application of Gail Corder Fischer represented by Peter Kavanagh of Zone Systems, Inc. for special exceptions to the fence height and the fence standards regulations, and a variance to the front yard setback regulations at 7820

Glenshannon Circle. This property is more fully described as Lot 9 in City Block 13/5454 and is zoned an R-7.5(A) Single Family District, which limits the height of a fence in the front yard to four feet, requires a fence panel with a surface area that is less than 50 percent open not be located less than five feet from the front lot line, and requires a front yard setback of 25 feet. The applicant proposes to construct a nine-foot-tall fence with fence panels that do not meet the minimum opacity requirement in a required front yard, and a swimming pool and related structures and provide a zero-foot front yard setback, which will require a five-foot special exception to the fence regulations, a special exception to the fence standards regulations, and a 25-foot variance to the front yard setback regulations.

LOCATION: 7820 Glenshannon Circle

REPRESENTATIVE: Peter Kavanagh of Zone Systems, Inc.

APPLICANT/OWNER: Gail Corder Fischer

REQUEST:

The applicant proposes a fence of nine-feet-in-height, constructed of brick with cast stone caps located at the intersection of Glenshannon Circle and Crownwood Court wholly in the front yard setback. The site is currently constructed with a two-story single family dwelling unit.

STANDARD FOR A SPECIAL EXCEPTIONS TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

STANDARD FOR A VARIANCE:

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

- (A) In general.
 - (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.

(B) Structures. In exercising its authority under Subsection (A)(ii), 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:

(iv) 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;

(v) 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;

(vi) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

(vii) compliance would result in the unreasonable encroachment on an adjacent property or easement; or

(viii) the municipality considers the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Per the evidence (**Attachment A**) submitted by the representative and the proposed site plan, the property is irregular in shape, sloped, and has two front yards with two 25-foot platted build lines. The site is only one of a dozen that requires two build lines; however, removal of platted build lines cannot be remedied through the board or the variance process. Additionally, the subject property appears to be one of less than 25 lots within the general vicinity that has significant topography changes that warrant a retaining wall which does not exist on other nearby properties. Therefore, the subject site is unique and different from most lots in the CUD and R-7.5(A) Single Family District. These conditions further restrict the property from being developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning classification.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5(A) (Single Family District), SUP No. 821
<u>North:</u>	R-7.5(A) (Single Family District), SUP No. 821
<u>East:</u>	R-7.5(A) (Single Family District), SUP No. 821
<u>South:</u>	R-7.5(A) (Single Family District), SUP No. 821
<u>West:</u>	R-7.5(A) (Single Family District), SUP No. 821

Land Use:

The subject site is developed with a single-family use. Surrounding properties to the north, south, and west are developed with single-family uses as well. The subject property and the surrounding areas are regulated by a CUD, Community Unit Development and SUP No. 821 which exists within the CUD regulate the private street configurations.

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 subject site is zoned an R-7.5(A) Single Family District and SUP No. 821 and requires a minimum front yard setback of 25 feet. The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard setback.

Three requests exist for the subject site. The first request for a special exception to the fence height regulations of five-feet is made to construct and maintain a nine-foot-tall fence which will require a five-foot special exception. The second request for a special exception is made to the fence standards regulations to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line and the third request for a variance to the front yard setback regulations is made to construct and maintain structures accessory to the single family dwelling and provide a zero-foot front yard setback, which will require a 25-foot variance to the front yard setback regulations along Crownwood Court. Additionally, the existing rails for the steps along Glenshannon Circle encroach into the front yard setback and will provide a zero-foot front yard setback.

In a single-family district, a corner lot with frontage on two streets where one frontage is shorter than the other allow the longer frontage to be governed by the side yard regulations. In this case, Crownwood Court provides the longer frontage and would be treated as a side yard. However, if another structure has an established setback along the block face of the longer frontage, that side must maintain an unobstructed front yard to comply with block continuity. Since a structure exists along the rear of the subject site that fronts along Crownwood Court and provides a front yard setback of 25 feet this front yard setback must be maintained for continuity of the blockface.

Lots in this district are typically 7,500 square feet in area. The subject site is sloped, contains two front yards: one along Crownwood Court, and the second along Glenshannon Circle. Additionally, the plat indicates that less than 25 lots within the CUD contains two platted build lines of 25 feet.

Per Sec. 51A-8.505(c), if an existing platted build line established a minimum front, side, or rear yard setback greater than the minimum front, side, or rear yard setback required by zoning regulation, relief from the platted building line must be sought through a replat submitted to the Commission.

According to internal records, the property was permitted in July 1996 to be developed with a two-story single-family dwelling unit. The single-family dwelling unit consists of approximately 8,508 square feet of floor area, an approximately 723-square-foot attached garage, and a gunite underground pool with a grill area and fireplace proposed to be constructed within the 25-foot front yard setback along Crownwood Court and permitted on February 12, 2021.

According to the elevation plan submitted, the applicant proposes a fence with a maximum height of nine feet, constructed of brick with cast stone caps.

Additionally, the following information is shown on the submitted site plan:

- The proposed fence is perpendicular to Crownwood Court and runs along the front lot line with a length of approximately 106 feet.
- The property contains topographical changes and provides a change in grade from 568 feet to 572 feet along Crownwood Court.

Additionally, this topographical change presents a rise of approximately three feet from the sidewalk to the western façade of the subject structure.

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 August 5, 2022, no letters have been submitted in support of the request and no letters have been submitted in opposition to the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of nine feet located on Crownwood Court will not adversely affect neighboring properties. Granting the special exceptions to the fence standards related to the height and opacity would require the proposal exceeding four feet-in-height in the front yard setback located along Crownwood Court to be maintained in the locations, heights, and opacity/openness as shown on the site plan and elevation plan.

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:

- June 7, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- July 11, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 11, 2022: The Board Senior Planner emailed the 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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.”
- July 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Conservation District Senior Planner, and the Development Services Chief.
- August 5, 2022: The representative provided documentary evidence (**Attachment A**) for Board consideration.

BOARD OF ADJUSTMENT ACTION: August 16, 2022

APPEARING IN FAVOR: Peter Kavanaugh 1620 Handley Ste A Dallas, TX
Gail Fischer 7820 Glenshannon Circle Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION#1: Halcomb

I move that the Board of Adjustment, in Appeal No. BDA 212-067, on application of Gail Corder Fischer represented by Peter Kavanaugh, **grant** the 25-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony

shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Narey

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0 –

MOTION PASSED: 5 - 0 (unanimously)

MOTION#2: Brooks

I move that the Board of Adjustment, in Appeal No. BDA 212-067, on application of Gail Corder Fischer represented by Peter Kavanagh, **grant** the request of this applicant to construct and/or maintain a nine-foot-high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Narey

AYES: 4 – Brooks, Halcomb, Narey, Neumann

NAYS: 1 – Frankford

MOTION PASSED: 4 - 1

MOTION#3: Narey

I move that the Board of Adjustment, in Appeal No. BDA 212-067, on application of Gail Corder Fischer represented by Peter Kavanagh, **grant** the request of this applicant to construct and/or maintain a fence with panel having less than 50 percent open surface area located less than five feet from the front lot line as a special exception to the surface area openness requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Brooks

AYES: 4 – Brooks, Halcomb, Narey, Neumann

NAYS: 1 – Frankford

MOTION PASSED: 4 - 1

FILE NUMBER: BDA212-073(JM)

BUILDING OFFICIAL’S REPORT: Application of Aida Figueroa-Flores for special exceptions to the fence standards regulations relating to height and opacity at 1903 Farola Drive. This property is more fully described as Lot 14, Block 7/5372 and is zoned R-7.5(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line. The applicant proposes to construct an eight-foot-high fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, which will require special exceptions to the fence standards regulations.

LOCATION: 1903 Farola Drive

APPLICANT: Aida Figueroa-Flores

REQUEST:

The applicant proposes to construct an eight-foot-high solid cedar fence in a required side yard, which will require a two-foot special exception to the fence regulations, and to construct a single-family residential structure (pergola and deck) and provide a provide a zero-foot side yard setback, which will require a five-foot variance to the side yard setback regulations.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION (fence height + opacity):

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

There have not been any recent related board or zoning cases recorded either on or near the subject site within the last five years.

GENERAL FACTS /STAFF ANALYSIS:

The subject site is located on the northeast corner of Farola Drive and Desdemona Drive and zoned an R-7.5(A) Single Family District which requires a 25-foot front yard and compliance with the fence standards regulations in required front yards. However, this property is encumbered with two front yards due to a provision in the Dallas Development Code meant to maintain block continuity when lots face upon a street and provide a front yard setback. This second front yard setback is required to maintain block continuity established by lots to the north of the subject site, which all front along the Desdemona Drive.

The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. Additionally, the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.

According to DCAD, the existing one-story single-family structure was constructed in 2005 containing a 1,404-square-foot main structure and a 216-square-foot attached garage. The corner lot has a width of 60 feet along Farola Drive and a length of 123 feet along Desdemona Drive.

The applicant proposes to replace an existing six-foot-high solid wood privacy fence with an eight-foot-tall solid wood fence along the property line which would require a two-foot special exception to height and a special exception to opacity to be permitted.

The following was noted from reviewing the site and elevation plans provided:

- The proposed fence is an eight-foot-tall, board-on-board (solid in nature), decorative cedar fence along the western lot line along Desdemona Drive.
- The fence begins at the most inset western façade of the main structure facing Farola Drive and travels horizontally about 30 feet to the Desdemona Drive property line, avoiding the 45-foot visibility triangle at the street intersection.
- The fence then turns north along the property line for about 70 feet before accommodating the 20-foot visibility triangle at the alleyway intersection and turning easterly along the alley frontage.

Staff conducted a field visit of the site and surrounding area and noticed one other fence within a 200-foot radius of the property that seemed taller than four feet-in-height and solid in nature located in second front yard.

The applicant has the burden of proof in establishing that the special exceptions to the fence height of up to two feet and opacity in the second required front yard will not adversely affect neighboring properties.

As of August 5, 2022, staff received five letters in support and none in opposition regarding this request.

If the board were to grant the special exceptions and impose the site plan and elevation as conditions, the proposed fence located along the lot line and within the second front yard setback along the Desdemona Drive frontage would be limited to what is shown on these documents. Finally, no additional relief is provided with this request.

Timeline:

- May 5, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- June 29, 2022: Applications were transferred from Development Services to the Board team at Current Planning for processing on the August docket.
- July 1, 2022: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 19, 2022: The Board of Adjustment Chief Planner/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.”
- July 26, 2022 The applicant submitted five letters in support of the request.
- July 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included the following: the Board

of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Development Services Chief Planner, Chief Arborist, and the Planner and Urban Design Department Senior Conservation District Planner. No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: August 16, 2022

APPEARING IN FAVOR: Aida Flores 1903 Farola Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Narey

I move that the Board of Adjustment in Appeal No. BDA 212-073 **hold** this matter under advisement until September 20, 2022.

SECONDED: Halcomb

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

****The first motion per Frankford and seconded by Neumann to Deny without prejudice was withdrawn. The second motion per Halcomb seconded by Brooks to Grant failed 3-2 with Neumann and Frankford in opposition. The third motion per Frankford and seconded by Neumann to Grant was withdrawn****

FILE NUMBER: BDA212-079(PD)

BUILDING OFFICIAL’S REPORT: Application of Kent Washington for a special exception to the parking regulations at 424 W. Davis Street. This property is more fully described as Lot 4, in City Block 10/3138, and is zoned CD No. 7, the Bishop Eighth Conservation District, which requires off-street parking to be provided. The applicant proposes to construct a nonresidential structure for a restaurant without drive-in or drive-through service use, and provide nine of the required 11 parking spaces, which will require a two-space special exception (18 percent reduction) to the parking regulation.

LOCATION: 424 W. Davis Street

APPLICANT: Kent Washington

REQUEST:

A request for a special exception to the off-street parking regulations of two spaces is made to construct a restaurant without a drive-in or drive-through service use with a total floor area of 2,484 square feet on the subject site.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

Sec.51P-621.110(D) Special exception. The board of adjustment may grant a special exception of up to 50 percent of the required off-street parking upon the findings and considerations listed in Section 51A-4.311. The board of adjustment may impose conditions on the special exception.

Section 51A-4.311 of the Dallas Development Code states the following:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article *if the board finds*, after a public hearing, that *the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets*. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.

- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

No staff recommendation is made on this request for a special exception to the parking demand since the basis for this type of appeal is whether the board finds the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

To assist the board in its decision-making, the Transportation Development Services Senior Engineer reviewed the area of request and information provided by the applicant (**Attachments A1, A2**). A comment sheet (**Attachment B**) submitted in review of the request states, “no objections”

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	Conservation District No. 7
<u>East:</u>	Conservation District No. 7
<u>South:</u>	Conservation District No. 7
<u>West:</u>	Conservation District No. 7

North: Conservation District No. 7

Land Use:

The subject site is developed with a one-story restaurant without drive-in or drive-through service use. Surrounding uses include residential uses to the north and south, and personal service uses to the east and west.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The purpose of this request for a special exception to the off-street parking regulations of two spaces (or an 18-percent reduction of the parking spaces required) is to maintain an existing structure proposed to operate as a restaurant without a drive-in or drive-through service use and provide eight parking spaces on-site and one delta credit for a total of nine parking spaces technically provided.

The property is zoned CD No. 7, the Bishop Eighth Conservation District, which requires the following off-street parking to be provided:

- one space for each 220 square feet of floor area for a retail or restaurant without a drive-in or drive-through service use

Therefore, the proposed 2,484-square-foot restaurant without a drive-in or drive-through service use will require a total of eleven off-street parking spaces on-site.

The Transportation Development Services Senior Engineer has no objection to the request subject to special conditions noted (**Attachment B**).

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

- The parking demand generated by the restaurant without drive-in or drive-through service use on the site does not warrant the number of off-street parking spaces required, and
- The special exception of two spaces (or an 18-percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

As of August 5, 2022, no letters have been received regarding this request.

If the board were to grant this request a condition may be imposed that the special exception of two spaces shall automatically and immediately terminate if and when a restaurant without a drive-in or drive-through service use is changed or discontinued.

Timeline:

- June 21, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- July 11, 2022: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 11, 2022: 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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.”
- July 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. The review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Chief Planner, the Development Services Conservation District Senior Planner, and the Board of Adjustment Senior Planner.
- July 27, 2022: The representative submitted evidence for staff consideration **(Attachment A1-A2)**.
- August 1, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet marked “no objection to the request” **(Attachment B)**.

BOARD OF ADJUSTMENT ACTION: August 16, 2022

APPEARING IN FAVOR: Samantha Renz 4100 International PI Ft. Worth, TX

APPEARING IN OPPOSITION: Brooke Batson 612 Haines Ave. Dallas, TX

MOTION: Narey

I move that the Board of Adjustment in Appeal No. BDA 212-079 **hold** this matter under advisement until **September 20, 2022**.

SECONDED: Halcomb

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann
NAYS: 0–
MOTION PASSED (unanimously): 5-0

FILE NUMBER: BDA212-031(JM)

BUILDING OFFICIAL'S REPORT: Application of German G. Sierra for a variance to the parking regulations at 1805 S. Edgefield Avenue. This property is more fully described as Lots 14,15,16, and Pt of Lots 17,18, Block 2/4742, and is zoned a CR Community Retail District, which requires parking to be provided.

LOCATION: 1805 S. Edgefield Avenue

APPLICANT: German G. Sierra

REQUESTS: The applicant proposes to maintain a nonresidential structure with 1,235 square feet of floor area and a covered patio with an additional 100 square feet of floor area, for a restaurant without drive-in or drive-through service use, and provide three of the required ~~18~~ 13 parking spaces, which will require ~~a 13 a 10-space variance (83.33~~ **76.92** percent reduction) to the parking regulations. **These new calculations are excluding the accessory structure which may operate as a separate use. Any future occupancy of the accessory structure will require parking in accordance with Chapter 51A.**

UPDATE: On July 27th, the applicant submitted a parking study and alternative plan (**Attachment F**). On August 5th, the applicant provided documentary evidence including a revised site plan and office floor plan (**Attachment G**). All revised information is **highlighted**.

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:

- (C) In general.
 - (ix) 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;
 - (x) 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
 - (xi) 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.

(D) Structures. In exercising its authority under Subsection (A)(ii), 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:

- (xii) 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;
- (xiii) 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;
- (xiv) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (xv) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (xvi) the municipality considers the structure to be a nonconforming structure.

STAFF RECOMMENDATION: ENGINEER OPINION

Approval, subject to the following condition:

- Compliance with the submitted **August 5th revised** site plan is required **(part of Attachment G)**.

Rationale:

- The Transportation Development Services Senior Engineer reviewed the submitted evidence **(Attachment A-G)** including the new parking study and found no objection to the variance request **(Attachment B, revised Attachment H)**.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is being redeveloped with a restaurant without drive-in or drive-through service use (coffee shop). All surrounding properties are developed with single-family uses.

Zoning/BDA History:

1. **Z178-142:** An authorized hearing to determine proper zoning on this site and adjacent CR District properties in Elmwood. No action taken.

GENERAL FACTS/STAFF ANALYSIS

The subject site is zoned CR Community Retail District, where the typical lot size varies significantly. Per DCAD records, the property is 6,680 square feet-in-size with a 1,235-square-foot structure erected in 1948, and a 400-square-foot detached accessory structure (no date provided). The property is located at the southwest corner of Tennessee Avenue and South Edgefield Avenue and has additional frontage along an alleyway to the west. The applicant is seeking to maintain these structures to house a coffee shop. The coffee shop is considered a restaurant use and requires parking at a ratio of one space per 100 square feet of floor area.

The applicant states that due to the residential configuration and size of the lot, the property cannot be used in a manner commensurate to other properties with the same CR District zoning (**Attachment A**), some found within the same Elmwood area.

According to the site plan submitted with the request, the detached accessory structure contains 446 square feet. **A small, covered patio area with about 100 square feet of floor area is depicted on the site plan but not clearly noted in the calculations for required parking.** Combined with the main structure of 1,235 square feet, the total restaurant area is considered 1,781 square feet and requires a minimum of 18 parking spaces. However, the parking required, ratio for the land use, and parking reduction for providing bicycle parking were misstated. It should also be noted that bicycle parking reductions are only allowed if the total required parking is 20 spaces per Sec.51A-4.314.

On June 10, 2022, the applicant submitted a revised site plan (**Attachment D**) which now shows the correct required parking ratio for a restaurant without drive-in or drive-through service use (coffee shop) at one space per 100 square feet of floor area. The site plan indicates that three spaces will be provided, plus 12 bicycle parking spaces which would only allow for a reduction for three spaces if the original parking requirement was for 20 or more parking spaces. Therefore, the variance request is for the remainder of 14 spaces.

An alternate site plan (**Attachment E**) was also provided on June 10th which identifies additional parking spaces within the 446-square-foot detached structure previously labeled as “dry storage area.” However, ~~at the time of this report, the alternate plan had not been reviewed by staff for accuracy/compliance.~~ **As noted at the hearing in June, the alternate site plan showing noncompliant parking spaces is not a valid option.**

On August 5, 2022, the applicant submitted a revised site plan (Attachment G) along with an office floor plan and explanation of the use of the structures on the site. The revised plan still depicts the covered patio while failing to account for the area in the calculation of parking required. Two land uses are proposed, the restaurant without drive-in or drive-through service use (coffee shop) and an office use with 1,235 square feet of floor area plus the covered patio for a total of 1,335 square feet requiring 13 parking spaces and an office use within the 446-square-foot accessory structure which requires one parking space. Three parking spaces and 12 bicycle parking spots are provided. The applicant intends to operate an office use (or any allowable use) within the accessory structure as a separate main use, subject to the parking requirements of Chapter 51A. If the applicant is unable to bring the accessory structure up to code to obtain a separate CO for the use, the structure may be torn down.

The applicant's evidence includes supportive passages from a pending neighborhood plan WOCAP the West Oak Cliff Area Plan, as well.

Ultimately, the Transportation Development Services Senior Engineer reviewed the submitted evidence and found no objection to the variance request (**Attachment B**). On July 27th, a parking study was provided (**Attachment F**). Furthermore, the operations were updated to exclude the accessory structure (**Attachment G**). A revised comment sheet was provided and maintains no objection to the request (**Attachment H**).

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

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

The board may also 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.

As of August 5, 2022, staff had received 32 letters of support of which 18 are within the 200-foot notification radius. No letters in opposition have been received.

If the board were to grant the variance request and impose the submitted **revised** site plan as a condition, the proposed parking would be limited to what is shown on this document. No additional relief is provided with this request.

TIMELINE:

- February 2, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 15, 2022: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board
- March 21 & 30, 2022: The applicant submitted additional evidence for consideration (**Attachment A**).
- March 31, 2022: The Transportation Development Services Senior Engineer submitted a comment sheet (**Attachment B**).
- April 19, 2022: The Board of Adjustment Panel A decided to hold this case under advisement until June 21, 2022.
- June 10, 2022: The applicant provided additional information including a presentation (**Attachment C**), a site plan (**Attachment D**), and an alternate site plan (**Attachment E**). More support letters were also provided which are included in the letters section of materials for this case.

July 27, 2022: The applicant provided a parking study (**Attachment F**).

August 5, 2022: The applicant submitted additional evidence and a revised site plan (**Attachment G**).

August 10, 2022: The Transportation Development Services Senior Engineer submitted a comment sheet (**Attachment H**).

BOARD OF ADJUSTMENT ACTION: June 21, 2022

APPEARING IN FAVOR: German Sierra 1805 S. Edgefield Dallas, TX

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 212-049 hold this matter under advisement until August 16, 2022.

SECONDED: Frankford

AYES: 5 – Lamb, Halcomb, Narey, Frankford, Neumann

NAYS: 0 –

MOTION PASSED: 5 - 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: April 19, 2022

APPEARING IN FAVOR: German Sierra 1805 S. Edgefield Ave. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 212-031, hold this matter under advisement until June 21, 2022.

SECONDED: Narey

AYES: 5 – Lamb, Halcomb, Narey, Frankford, Neumann

NAYS: 0-

MOTION PASSED: 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: **August 16, 2022**

APPEARING IN FAVOR: German Sierra 1805 S. Edgefield Ave. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: **Narey**

I move that the Board of Adjustment, in Appeal No. BDA 212-031, on application of German Sierra, **deny** the variance to the parking regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

SECONDED: **Halcomb**

AYES: 5 – Lamb, Halcomb, Narey, Frankford, Neumann

NAYS: 0-

MOTION PASSED: 5-0 (unanimously)

****The first motion per Halcomb and seconded by Neumann to Deny without prejudice failed 2-3 with Narey, Brooks and Frankford in opposition. The second motion per Brooks seconded by Frankford to Grant failed 3-2 with Neumann and Halcomb in opposition. ****

FILE NUMBER: BDA212-049(PD)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin, Baldwin Associates representing Hudson CG LLC for special exceptions to the fence height and fence standards regulations at 4256 Park Lane. This property is more fully described as a tract of land in City Block 5548 and is zoned an R-10(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line. The applicant proposes to construct a **six**-foot-tall fence with fence panels that do not meet the minimum opacity requirement in a required front yard, which will require a **two**-foot special exception to the fence regulations and a special exception to the fence standards regulations.

LOCATION: 4256 Park Lane

APPLICANT: Hudson CG LLC

REPRESENTATIVE: Rob Baldwin, Baldwin Associates

REQUEST:

The applicant proposes a fence of **six**-feet-in-height, constructed of an iron sliding gate, stucco walls with cast stone caps, stucco columns with cast stone caps, and iron fencing painted black located along Park Lane with a width of 125 feet. The site is currently being constructed with a two-story single-family dwelling unit.

UPDATE:

On June 21st, the representative asked to hold the request under advisement to allow an opportunity to garner support from the community and potentially revise the site plan and elevation plan to reflect the desires of the community.

To date, the site plan has been revised to request a lower fence height of six feet rather than eight feet. All edits to the case report are highlighted.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single Family District)
Northwest: R-10(A) (Single Family District)
Northeast: R-10(A) (Single Family District)
East: R-10(A) (Single Family District)
South: R-10(A) (Single Family District)
West: R-10(A) (Single Family District)

Land Use:

The subject site is currently under construction with a single-family use. Surrounding properties to the northwest, northeast, east, south, and west are developed with single-family uses as well.

Zoning/BDA History:

There have been two related board cases in the vicinity within the last five years.

1. BDA190-074: On August 18, 2020, Panel A, Board of Adjustment granted a special exception to the fence height regulations to construct and maintain six-foot-six-inch-high fence in a required front yard, which required a two-foot-six-inch special exception at 4211 Brookview Drive.
2. BDA190-042: On June 24, 2020, Panel B, Board of Adjustment granted a request for a special exception to the fence height regulations to construct and maintain a seven-foot-high fence in a required front yard, which required a three-foot special exception at 4523 Park Lane.

GENERAL FACTS/STAFF ANALYSIS:

The subject site is zoned an R-10(A) Single Family District and requires a minimum front yard setback of 30 feet. The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.

Two requests exist for the subject site. The first request for a special exception to the fence height regulations is made to construct and maintain a six-foot-tall fence which will require a two-foot special exception.

The second request for a special exception is made to the fence standards regulations to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line.

The property is currently under construction. According to internal records, the property was permitted in August 2021 to be developed with a two-story single-family dwelling unit constructed. The single-family dwelling unit consists of approximately 9,972 square feet of floor area, an underground pool, a motor court, and a three-car attached garage.

According to the elevation plan submitted, the applicant proposes a fence with a maximum height of eight feet, constructed of stucco walls with cast stone caps, stucco columns with cast stone caps, and iron fencing painted black stucco walls with an iron sliding gate painted black.

Additionally, the following information is shown on the submitted site plan:

- The proposed fence with access gates along Park Lane runs along the front lot line with a depth of 56 feet.
- The portion of the fence where the iron gate is proposed is located or setback 31 feet from the front lot line.

As of August 5, 2022, no letters have been submitted in support of the request and **six letters have been submitted in opposition to the request.**

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of six feet located on Park Lane will not adversely affect neighboring properties.

Granting the special exceptions to the fence standards related to the height and opacity would require the proposal exceeding four feet-in-height in the front yard setback located along Park Lane to be maintained in the locations, heights, and opacity/openness as shown on the **revised** site plan and **revised** elevation plan.

Timeline:

April 15, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents (**Attachment A**) that have been included as part of this case report.

May 2, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

July 11, 2022: The Board Senior Planner emailed the 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th

deadline to submit additional evidence to be incorporated into the Board's docket materials;

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

May 26, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Conservation District Chief Planner, the Board Senior Planner, and the Assistant City Attorney to the Board.

June 30, 2022: The representative submitted a revised site plan and elevation plan reflecting a proposed fence height of six feet rather than the originally proposed fence height of eight feet. The application packet was updated to include the revised BO report and plans.

BOARD OF ADJUSTMENT ACTION: June 21, 2022

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

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 212-049 hold this matter under advisement until August 16, 2022.

SECONDED: Halcomb

AYES: 5 – Lamb, Halcomb, Narey, Frankford, Neumann

NAYS: 0 –

MOTION PASSED: 5 - 0 (unanimously)

****Ms. Lamb's original motion to hold until July 19, 2022 was approved to withdraw****

BOARD OF ADJUSTMENT ACTION: August 16, 2022

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

APPEARING IN OPPOSITION: None

MOTION#1: Frankford

I move that the Board of Adjustment, in Appeal No. BDA 212-049, on application of Rob Baldwin, **grant** the request of this applicant to construct and/or maintain a six-foot-high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Halcomb

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0-

MOTION PASSED: 5-0 (unanimously)

MOTION#2: Frankford

I move that the Board of Adjustment, in Appeal No. BDA 212-049, on application of Rob Baldwin, **grant** the request of this applicant to construct and/or maintain a fence with panel having less than 50 percent open surface area located less than five feet from the front lot line as a special exception to the surface area openness requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Brooks

AYES: 4 – Brooks, Halcomb, Frankford, Neumann

NAYS: 1- Narey

MOTION PASSED: 4-1

FILE NUMBER: BDA212-052(PD)

BUILDING OFFICIAL'S REPORT: Application of Rob Baldwin, Baldwin Associates representing Michael Brett Johnson and Kimberly Priest Johnson for special exceptions to the fence standards and the visibility obstruction regulations at 4630 Northaven Road. This property is more fully described as Lot 16, in City Block 1/6391, and zoned an R-1/2(A) Single Family District and Tract 2 within NSO Neighborhood Stabilization Overlay No. 1, Northaven Estates, which limits the height of a fence in the front yard to four feet and requires a 20-foot visibility triangle at an alley and driveway approach. The applicant proposes to construct an eight-foot-six-inch-tall fence located within a visibility obstruction triangle.

LOCATION: 4630 Northaven Road

APPLICANT: Michael Brett Johnson and Kimberly Priest Johnson

REPRESENTATIVE: Rob Baldwin, Baldwin Associates

REQUEST:

The applicant proposes to maintain an eight-foot-six-inch-tall aluminum fence with two metal vehicular gates one-foot from the front lot line along the Northaven Road frontage, within required visibility obstruction triangles.

UPDATE:

On July 19th, the representative asked to hold the request under advisement to allow an opportunity to garner support from the community and potentially revise the site plan and elevation plan to reflect the desires of the community.

To date, staff has received no updates regarding the request. All edits to the case report are highlighted.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d)(3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when *in the opinion of the board*, the item will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making. Additionally, while evidence is not required for this type of appeal, the representative provided evidence (**Attachment A**) via a letter for Board consideration.

The Transportation Development Services Senior Engineer has reviewed the request for a special exception to the visual obstruction regulations and does not have objections to the proposed request (**Attachment B**).

BACKGROUND INFORMATION:

Zoning:

Site: R-1/2(A) Single Family District/NSO 1 Tract 2
Northwest: R-16(A) Single Family District
Northeast: R-16(A) Single Family District
East: R-1/2(A) Single Family District/NSO 1 Tract 2
Southwest: R-1/2(A) Single Family District/NSO 1 Tract 1
Southeast: R-1/2(A) Single Family District/NSO 1 Tract 1
West: R-1/2(A) Single Family District/NSO 1 Tract 2

Land Use:

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

Zoning/BDA History:

There is one related board case in the vicinity within the last five years.

1. **BDA212-0077:** On August 17, 2022, the Panel B, Board of Adjustment will hear a request for special exception to the fence height regulations to construct and maintain a seven-foot-tall fence in a required front yard, which will require a three-foot special exception to the fence regulations at 11211 Strait Lane.

GENERAL FACTS/STAFF ANALYSIS:

The applicant proposes to maintain an eight-foot-six-inch-tall black aluminum fence with two electric double gates one-foot from the front lot line constructed of brick pilasters and metal gates. The subject site is situated along one frontage (Northaven Road) and developed with a two-story single-family dwelling. The fence is proposed to extend at a staggered depth of one-foot and eleven feet along the front yard setbacks, within a required visibility obstruction triangle at the private drive approach along Northaven Road.

The property is zoned an R-1/2(A) Single Family District and NSO 1 Tract 2 which requires a front yard setback of 75 feet and an interior side yard setback of 15 feet. The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.

Section 51A-4.602(d) of the Dallas Development Code states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and alleys); and

between two-and-a-half and eight feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The following information is shown on the submitted site plan:

- The proposed fence is located in the front yard along Northaven Road, constructed along the front lot line.
- The length of the proposed fence in the front yard along Northaven Road is approximately 168.66 feet perpendicular to the frontage.
- The fence is proposed to be constructed of black aluminum fencing and black aluminum posts.
- The fence proposes two electric gates obstructing the two 20-foot visibility triangles along Northaven Road (14-foot-wide gates) proposed to be constructed of brick pilasters and black metal gates.
- The visual obstruction is proposed to encroach approximately 10-feet into the visibility triangles at the private drive approaches along Northaven Road.

Staff conducted a field visit of the site and surrounding area and noticed no other fences appear to be constructed above the maximum height of four feet within the front yard setback nor obstruct the required 20-foot visibility triangle at drive approaches.

The applicant has the burden of proof for both, the special exception to the fence regulations and a special exception to construct the fence in a required visibility obstruction triangle, since the basis for these types of appeals are in the opinion of the board:

- Whether the proposed fence height would adversely affect the neighboring properties,
- Visibility obstructions items are made on the basis of the item(s) not constituting a traffic hazard, and
- Technical opinions provided from the city engineer.

The Transportation Development Services Senior Engineer does not have objections to the request for a special exception to construct a fence in a required visibility obstruction triangle **(Attachment B)**.

As of August 5, 2022, staff has received **four letters in opposition** of the request and no letters in support of the request.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation plan would limit the height of the fence and location within the 20-foot visibility triangle at the private drive approaches adjacent to Northaven Road, as shown on the respective plans.

Timeline:

May 2, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

May 6, 2022

July 11, 2022: The Board Senior Planner emailed the 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 June 29th and July 27th deadlines to submit additional evidence for staff to factor into their analysis; and the July 8th and August 5th deadlines 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.”

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the July public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Development Services Chief Planner, the Conservation Districts Senior Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

June 30, 2022: The representative provided evidence (**Attachment A**) for staff consideration.

June 30, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet (**Attachment B**).

Minutes:

BOARD OF ADJUSTMENT ACTION: July 19, 2022

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

APPEARING IN OPPOSITION: Blanche Moore 4720 Northaven Rd. Dallas TX
Shelton Hopkins 4707 Crooked Ln. Dallas, TX

McKenna Michel 4717 Crooked Ln. Dallas TX

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 212-052 hold this matter under advisement until August 16, 2022.

SECONDED: Neumann

AYES: 4 – Lamb, Finney, Glover, Neumann

NAYS: 1– Fleming

MOTION PASSED: 4 - 1

****The first motion per Lamb and seconded by Neumann to Grant failed 1-4 with Neumann, Finney, Glover and Fleming in opposition ****

BOARD OF ADJUSTMENT ACTION: August 16, 2022

APPEARING IN FAVOR:

Rob Baldwin 3904 Elm St. Ste. B Dallas, TX
Brett Johnson 4630 Northaven Rd. Dallas, TX
Kimberly Johnson 4630 Northaven Rd. Dallas, TX
William Miller 4709 Northaven Rd. Dallas, TX
Amy Bradshaw 11301 Strait Lane Dallas, TX

APPEARING IN OPPOSITION:

Shelton Hopkins 4707 Crooked Ln. Dallas, TX
McKenna Michel 4717 Crooked Ln. Dallas TX

MOTION#1: Brooks

I move that the Board of Adjustment, in Appeal No. BDA 212-052, on application of Rob Baldwin, **grant** the request of this applicant to construct and/or maintain an eight-foot six-inch high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Narey

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED (unanimously): 5-0

MOTION#2: Brooks

I move that the Board of Adjustment, in Appeal No. BDA 212-052, on application of Rob Baldwin, **grant** the request to maintain items in the visibility triangle at the drive approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Narey

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED (unanimously): 5-0

FILE NUMBER: BDA212-057(PD)

BUILDING OFFICIAL'S REPORT: Application of Achdut Israel represented by Ryan Northway for special exceptions to the fence standards and the visibility obstruction regulations at 5821 McShann Road. This property is more fully described as Lot 6, in City Block 6997, and zoned an R-16(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a 20-foot visibility triangle at an alley and driveway approach. The applicant proposes to construct and maintain a six-foot-tall fence located in the front yard within a visibility obstruction triangle.

LOCATION: 5821 McShann Road

APPLICANT: Achdut Israel

REPRESENTATIVE: Ryan Northway

REQUEST:

The applicant proposes to construct and maintain a six-foot-tall iron fence with two iron sliding vehicular gates and two keypad gate control and call stations 10 feet from the front lot line along the McShann Road frontage, within two required visibility obstruction triangles.

UPDATE:

On July 19th, the representative asked to hold the request under advisement to allow an opportunity to garner support from the community and potentially revise the site plan and elevation plan to reflect the desires of the community.

To date, staff has received no updates regarding the request, however, the representative has requested a second hold over due to the owner being out of town and unable to host an in-person meeting with the community. In an effort to establish a good neighbor-relationship, the owner would like to meet with the neighborhood before proceeding with the request. **All edits to the case report are highlighted.**

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d)(3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when *in the opinion of the board*, the item will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making.

The Transportation Development Services Senior Engineer has reviewed the request for a special exception to the visual obstruction regulations and does not have objections to the proposed request (**Attachment A**).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-16(A) Single Family District
<u>North:</u>	TH-2(A) Townhouse District
<u>East:</u>	R-16(A) Single Family District
<u>South:</u>	R-16(A) Single Family District
<u>West:</u>	R-16(A) Single Family District

Land Use:

The subject site is developed with an institutional use while surrounding properties to the north, east, south, and west are developed with a single-family dwellings.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The applicant proposes to maintain a six-foot-tall fence with two electric sliding gates constructed of iron and located 10 feet from the front lot line. The subject site is situated along one frontage (McShann Road) and developed with two structures consisting of a one-story structure dedicated to child-care during service and one two-story structure containing a church,

synagogue, temple, mosque use. The fence is proposed to extend at a depth of one-foot and length of 11 feet along the front yard setback, within two required visibility obstruction triangles at two private drive approaches along McShann Road.

According to DCAD, the structures were constructed in 1967 and 2021, respectively. The first structure constructed in 1967 is a single-family dwelling unit consisting of approximately 2,283 square feet which was converted to a church, synagogue, temple, mosque use (when). The second structure is a two-story structure (Achdut synagogue) consisting of approximately 2,059 square feet and constructed in 2021).

The property is zoned an R-16(A) Single Family District which requires a front yard setback of 35 feet and a side yard setback of 15 feet for uses other than single-family. The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.

Section 51A-4.602(d) of the Dallas Development Code states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and alleys); and between two-and-a-half and eight feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The following information is shown on the submitted site plan:

- The proposed fence is located in the front yard along McShann Road, constructed along the front lot line.
- The length of the proposed fence in the front yard along McShann Road is approximately 137.10 feet perpendicular to the frontage.
- The fence is proposed to be constructed of wrought iron.
- The fence proposes two electric sliding gates obstructing two 20-foot visibility triangles along McShann Road (16-foot-wide gates) proposed to be constructed of iron with two keypad gate control and call stations.
- The visual obstruction is proposed to encroach approximately 10-feet into the visibility triangles on either side of the gate at the private drive approaches along McShann Road.

Staff conducted a field visit of the site and surrounding area and noticed no other fences appear to be constructed above the maximum height of four feet within the front yard setback nor obstruct the required 20-foot visibility triangle at drive approaches.

The applicant has the burden of proof for both, the special exception to the fence regulations and a special exception to construct the fence in a required visibility obstruction triangle, since the basis for these types of appeals are in the opinion of the board:

- Whether the proposed fence height would adversely affect the neighboring properties,

- Visibility obstructions items are made on the basis of the item(s) not constituting a traffic hazard, and
- Technical opinions provided from the city engineer.

The Transportation Development Services Senior Engineer does not have objections to the request for a special exception to construct a fence in a required visibility obstruction triangle (**Attachment A**).

As of August 5th, 2022, staff has received no letters in support of the request and one letter in opposition of the request.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation plan would limit the height of the fence and location within the 20-foot visibility triangle at the private drive approaches adjacent to Northaven Road, as shown on the respective plans.

Timeline:

May 12, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

July 11, 2022: The Board Senior Planner emailed the 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 June 29th and July 27th deadline to submit additional evidence for staff to factor into their analysis; and the July 8th and August 5th 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.”

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the July public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Development

Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

July 30, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet (**Attachment A**).

August 4, 2022: The representative requested a second hold over due to the owner being out of town and unable to host an in-person meeting with the community. In an effort to establish a good neighbor-relationship, the owner would like to meet with the neighborhood before proceeding with the request.

Minutes:

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: Ryan Northway 5821 McShann Dallas, TX

APPEARING IN OPPOSITION: Tyrone Powell 5831 McShann Dallas TX
Willis Broden 5740 McShann Dallas, TX

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 212-057 hold this matter under advisement until August 16, 2022.

SECONDED: Finney

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: August 16, 2022

APPEARING IN FAVOR: Ryan Northway 5821 McShann Dallas, TX

APPEARING IN OPPOSITION: Tyrone Powell 5831 McShann Dallas TX
Willis Broden 5740 McShann Dallas, TX

MOTION#1: Frankford

I move that the Board of Adjustment, in Appeal No. BDA 212-057, on application of Achdut Israel represented by Ryan Northway, **deny** the special exception requested by this applicant to construct and/or maintain a six-foot six-inch high fence **with** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Halcomb

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION#2: Frankford

I move that the Board of Adjustment, in Appeal No. BDA 212-057, on application of Achdut Israel represented by Ryan Northway, **deny** the special exception requested by this applicant to maintain items in the visibility triangle at the drive approach **with** prejudice, because our

evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Brooks

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-058(PD)

BUILDING OFFICIAL’S REPORT: Application of Lynn Gilliland Dauterman represented by Tommy Mann and David Martin, Winstead PC for a special exception to the landscape regulations, **a special exception to the visibility obstruction regulations**, and a variance to provide a zero-foot front yard setback, which will require a 10-foot variance to the front yard setback regulations at 4525 McKinney Avenue. This property is more fully described as Lots 4-6, in City Block K/1535, and is zoned an LC Light Commercial Subdistrict within Planned Development District No. 193, the Oak Lawn Special Purpose District which requires mandatory compliance with the landscape regulations, **an unobstructed 20-foot visibility triangle at the drive approach**, and a minimum front yard setback of 10-feet. The applicant proposes to maintain the existing retail structure containing three suites and provide an alternate landscape plan, **encroachments into the visibility triangle**, and a zero-foot front yard setback, which will require a special exception to the landscape regulations, a special exception to the visibility obstruction regulations, and a variance to the front yard setback regulations.

LOCATION: 4525 McKinney Avenue

APPLICANT: Lynn Gilliland Dauterman

REPRESENTATIVE: Tommy Mann and David Martin, Winstead PC

REQUESTS:

The requests for a special exception to the landscape regulations, a special exception to the visibility obstruction regulations, and a variance to the front yard setback regulations are made to maintain a one-story retail structure consisting of three suites and approximately 9,994 square feet of floor area. The alternate landscape plan will not meet the requirements of the landscape regulations or the alternate landscape plan (BDA123-049) approved by the Panel B Board in 2013 or, more specifically, will not provide 60 percent of the landscape site area (LSA), 12 percent of the general planting area (GPA) of the LSA, nor six percent of the special planting area of the GPA.

UPDATE:

On July 19th, the representative asked the Board to hold the request under advisement until August to allow time for the request to include a special exception to the visibility obstruction regulations. To date, the application has been amended to include the request and the

proposed plans have been revised to reflect the amendment. All edits to the case report are highlighted.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

In determining whether to grant a special exception, the board shall consider the following factors:

- the extent to which there is residential adjacency.
- the topography of the site.
- the extent to which landscaping exists for which no credit is given under this article.
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Approval, subject to compliance with the alternate landscape plan.

The City of Dallas chief arborist submitted a memo regarding the applicant's request recommending approval (**Attachment B**).

Rationale:

- The applicant has substantiated how the proposed layout and use of the area will not compromise the spirit and intent of the landscape requirements of PD No. 193.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d)(3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when *in the opinion of the*

board, the item will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making. Additionally, while evidence is not required for this type of appeal, the representative provided evidence (Attachment A1-A6) via a letter for Board consideration.

The Transportation Development Services Senior Engineer has reviewed the request for a special exception to the visual obstruction regulations and does NOT have objections to the proposed request (**Attachment C**).

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:

(E) In general.

- (xvii) 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;
- (xviii) 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
- (xix) 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.

(F) Structures. In exercising its authority under Subsection (A)(ii), 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:

- (xx) 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;
- (xxi) 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;
- (xxii) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (xxiii) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (xxiv) the municipality considers the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval, subject to compliance with the submitted site plan.

Rationale:

Per the evidence, (**Attachment A1-A6**) the finished floor elevation of the existing structure is approximately two feet higher than the grade of the existing sidewalk. The topographical changes between the property line and the structure within a lateral distance of three-feet-eight-inches. To meet the accessibility standards, a 1:50 slope is required from the sidewalk to the front of the structure. If a landing structure is not allowed by variance within the front yard to "bridge the gap" of the grade change between the sidewalk and finished building floor elevation, it would be necessary to recess the front door significantly from the front building façade.

To do so could require as much as 83 feet of the building to be recessed for compliance which 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.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	Subdistrict LC within Planned Development District No. 193
<u>North:</u>	Subdistrict LC within Planned Development District No. 193
<u>South:</u>	Subdistrict LC within Planned Development District No. 193
<u>East:</u>	Subdistrict LC within Planned Development District No. 193
<u>West:</u>	Subdistrict LC within Planned Development District No. 193

Land Use:

The subject site is developed with an approximately 9,994-square-foot retail use (Yeti, Jonathan Adler/Interior Define). The areas to the north, south, east, and west are developed with a mix of retail uses.

Zoning/BDA History:

There have been no related board and zoning cases in the vicinity of the subject site within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The request for a special exception to the landscape regulations is to maintain an existing multi-tenant retail structure that will not meet the minimum landscape requirements along the McKinney Avenue frontage, neither provide the 20-foot unobstructed visibility triangle at the drive approach along McKinney Avenue frontage nor provide the minimum required front yard setback of 10 feet along McKinney Avenue frontage.

The property is in an LC Light Commercial Subdistrict within Planned Development District No. 193, the Oak Lawn Special Purpose District, with landscape regulations percentages designated for the 10-foot front yard setback. These percentages require a 10-foot front yard setback, 60 percent of the landscape site area (LSA), 12 percent of the general planting area (GPA) of the LSA, and six percent of the special planting area of the GPA are maintained.

Additionally, the LC Subdistrict reverts to Section 51A-4.602(d) of the Dallas Development Code states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and alleys); and between two-and-a-half and eight feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The request proposes to construct and maintain several structures which exists wholly in the 20-foot visibility triangle. These structures consist of Rosemary bushes, an ADA ramp and rail, and a 6-inch caliper Eve's Necklace tree.

While an alternate landscape plan (BDA123-049) was approved by the Panel B Board in 2013, the request sought only to increase the nonpermeable coverage of the property. While the staff report states that the trigger for the increase in nonpermeable coverage of the property was the addition of ramps and always to the front of the structure, the request failed to include neither the special exception to the visibility obstruction regulations nor the variance to the front yard setback regulations despite these encroachments being reflected on the approved site plan.

As a result, the chief arborist recommended the following: "The City's chief arborist states that the owner demonstrated an effort to meet the spirit and intent of the ordinance with the introduction of new trees in the wide planting area that will still be within the tree planting zone while also protecting the existing large tree and maintaining a neat site appearance in the front and rear of the lot."

The variance request to the front yard setback regulations focuses on maintaining the existing multi-tenant retail structure fronting along McKinney Avenue. Since the subject site is zoned an LC Light Commercial Subdistrict within PDD No. 193, a 10-foot front yard setback must be maintained. However, the structure as constructed encroaches wholly into the 10-foot front yard setback and the ADA ramp, rails, storefront steps to the other suites, rails, and canopies also encroach into the City right-of-way. However, these encroachments into the City rights-of-way will require separate licensure through the Real Estate Division.

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 LC Subdistrict 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 LC Subdistrict 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.

The City of Dallas chief arborist submitted a memo regarding the applicant's request (**Attachment B**).

The chief arborist's memo states the following with regard to "request":

The applicant is seeking a special exception to the landscaping requirements of PD 193 (LC). The proposed landscape plan amends the plan approved by the board in 2013 with case BDA 123-049.

The chief arborist's memo states the following with regard to "provision":

- The proposed landscape plan provides amended landscaping conditions to the provisions that were applied in 2013. The initial case was triggered with the construction of the access ramp. New plant materials will be added to existing plants.

The chief arborist's memo states the following with regard to "deficiencies":

- The structure and paving are within the LC district required front yard (10' setback) where 60% of the area is required to be landscape site area, 12% general planting area (of LSA), and 6% special planting area (of GPA). The plan proposes new store front access to the space. Ten percent of the lot is required to be LSA.
- Lots in LC district require sidewalks between 5-12' from back of curb with 6' width sidewalks.

The chief arborist's revised memo states the following with regard to the

“recommendation”:

The chief arborist recommends approval of the proposed alternative landscape plan because it appears the proposed layout and use of the area will not compromise the spirit and intent of the landscaping regulations.

As of August 5, 2022, no letters have been submitted in support of the request and no letters have been submitted in opposition to the request.

If the board were to grant these requests and impose the submitted site plan and alternate landscape plan as a condition to the request, the site would provide a variance to the front yard setback and exception from compliance with minimum landscape requirements, and visibility obstruction triangle along McKinney Avenue.

Timeline:

May 6, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” that have been included as part of this case report.

July 11, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

May 6, 2022

July 11, 2022: The Board Senior Planner emailed the 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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.”

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

June 30, 2022: The Development Services Chief Arborist provided staff with the Arborist report (**Attachment B**).

July 26, 2022: The representative provided evidence with revised plans (**Attachment A1-A6**) for staff review.

August 10, 2022: The Transportation Development Services Senior Engineer provided staff with the Engineering opinion (**Attachment C**).

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: David Martin 4525 McKinney Dallas, TX

APPEARING IN OPPOSITION:

MOTION: Glover

I move that the Board of Adjustment in Appeal No. BDA 212-058 hold this matter under advisement until August 16, 2022.

SECONDED: Neumann

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: August 16, 2022

APPEARING IN FAVOR: David Martin 4525 McKinney Dallas, TX
Leigh Crow 8117 Preston Rd. Dallas, TX
Dino Vajraca 1760 Creekside Oaks Dr. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION#1: **Brooks**

I move that the Board of Adjustment, in Appeal No. BDA 212-058, on application of Lynn Gilliland Dauterman represented by Tommy Mann, **grant** the request of this applicant for a special exception to the landscape requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property and testimony shows that (1) strict compliance with the requirements of this article will unreasonably burden the use of the property; (2) the special exception will not adversely affect neighboring properties, and (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

Compliance with the submitted alternate landscape plan is required.

SECONDED: **Narey**

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION#2: Brooks

I move that the Board of Adjustment, in Appeal No. BDA 212-058, on application of Lynn Gilliland Dauterman represented by Tommy Mann, **grant** the 10-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Narey

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION#3: Brooks

I move that the Board of Adjustment, in Appeal No. BDA 212-058, on application of Lynn Gilliland Dauterman represented by Tommy Mann, **grant** the request to maintain items in the visibility triangle at the drive approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Narey

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-059(PD)

BUILDING OFFICIAL’S REPORT: Application of Patrick Craine, Practice An Architectural Office for a variance to the front yard setback regulations at 938 N. Winnetka Avenue. This property is more fully described as part of lot 10 in City Block 1/3453 and is zoned a Subarea 1 within CD No. 1, the King’s Highway Conservation District, which requires a front yard setback of 25 feet. The applicant proposes to relocate the front entry door, existing nonconforming steps, and reconstruct the roof on an existing single-family residential structure and provide a 19-foot-six-inch front yard setback, which will require a five-foot-six-inch variance to the front yard setback regulations.

LOCATION: 938 N. Winnetka Avenue

APPLICANT: Patrick Craine, Practice An Architectural Office

REQUESTS:

The property is situated along two frontages (N. Winnetka Avenue and Stewart Drive) along a corner lot but only contains one front yard since continuity of the blackface is not triggered along Stewart Drive. The front yard and subject of the variance request is the frontage along N. Winnetka Avenue.

UPDATE:

On July 19th, the representative asked the Board to hold the request until the August hearing due to the representative being out of state. Evidence was submitted by the applicant which changed the staff opinion. All edits to the case report are highlighted.

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:

(G) In general.

- (xxv) 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;
- (xxvi) 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
- (xxvii) 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.

(H) Structures. In exercising its authority under Subsection (A)(ii), 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:

- (xxviii) 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;
- (xxix) 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;
- (xxx) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (xxxi) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (xxxii) the municipality considers the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval, subject to compliance with the submitted site plan.

Rationale:

Per the evidence (**Attachment A-C**) the site is restrictive in area and shape. The evidence states that the subject site is 6,192 square feet in area with a lot width of 40 feet. While the property is a corner lot, and has double frontage, the lot is not restricted by the blackface continuity since the property to the rear of the subject site does not front along Steward Drive.

The evidence provided compares 10 properties with an average lot area of 7,939 square feet and an average lot width of 48 feet. Additionally, the four comparative properties provide a range of lot width from 50 to 54 feet. Additionally, the average lot area of 7,939 square feet permits an average lot coverage of approximately 3,572 square feet while the subject site is restricted to an approximate lot coverage of 2,786 square feet for a delta of 786 square feet.

Ultimately, the evidence does establish that the subject site is restrictive in area and shape, and thus cannot be developed in a manner commensurate with 10 other properties within the same zoning district.

BACKGROUND INFORMATION:

Zoning:

Site: Subarea 1 within Conservation District No. 1
North: Subarea 2 within Conservation District No. 13
East: Subarea 2 within Conservation District No. 13
South: Subarea 1 within Conservation District No. 1
West: Subarea 1 within Conservation District No. 1

Land Use:

The subject site and all surrounding properties to the north, east, south, and west are developed with single-family dwellings.

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 renovating an existing single-family dwelling unit that is situated along a corner and two frontages (N. Winnetka Avenue and Steward Drive). In a single-family district, a corner lot with frontage on two streets where one frontage is shorter than the other allow the longer frontage to be governed by the side yard regulations. Since the subject site is zoned Subarea 1 within Conservation District No.1, a 25-foot front yard setback must be maintained along N. Winnetka Avenue.

The current façade of the existing house is located 24-feet-four-inches measured from the front wall face. However, since the Development Code regulates that a structure is any permanent feature above six-inches-in-height. Therefore, the setback is measured from the rise of the second step leading into the house. The applicant proposes to reroof the existing structure, remove the dormer window, change the roofline to provide a gable roof, a new window, provide new shaker siding, remove the existing four double hung windows, two along each side of the front door, install five double hung windows with two proposed along the northwestern side of the front façade and three proposed along the northeastern façade. Additionally, the applicant proposes to remove the existing two front concrete steps which currently encroach into the 25-foot front yard setback and replace and recenter the steps proposed to be constructed similarly of concrete.

A site plan has been submitted denoting the existing two-story, single-family dwelling located 19-feet-six-inches from the front property line along N. Winnetka Avenue and containing approximately 2,920 square feet of floor area.

The subject site is not irregular in shape but is irregular in area and provides a total floor area greater than comparable dwellings due to the addition of a second story. Subarea 1 within CD No. 1 zoning district requires lots to have a minimum lot size of 7,500 square feet. However, the applicant has not provided evidence that reflects the decrease in buildable lot area due to the loss of frontage width.

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 Subarea 1 within CD No. 1 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 Subarea 1 within CD No. 1 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 August 5, 2022, one letter has been submitted in opposition and two letters and a petition have been submitted in support 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:

May 2, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” that have been included as part of this case report.

May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

May 6, 2022

July 11, 2022: The Board Senior Planner emailed the 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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.”

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the

Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

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

July 8, 2022: The representative provided evidence (**Attachment A-C**) for staff review.

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: Jessica Nelson 829 W. Jefferson Blvd. Dallas, TX
Kristin Perkins 4420 Tamworth Rd. Ft. Worth TX

APPEARING IN OPPOSITION: None

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 212-059 hold this matter under advisement until August 16, 2022.

SECONDED: Neumann

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 -0 (unanimously)

BOARD OF ADJUSTMENT ACTION: August 16, 2022

APPEARING IN FAVOR: Jessica Nelson 829 W. Jefferson Blvd. Dallas, TX
Patrick Craine 829 W. Jefferson Blvd. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Halcomb

I move that the Board of Adjustment, in Appeal No. BDA 212-059, on application of Patrick Craine, **GRANT** the five-foot six-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Narey

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 -0 (unanimously)

FILE NUMBER: BDA212-060(JM)

BUILDING OFFICIAL’S REPORT: Application of Collin and Shannon Ray represented by Jeff Riddle for a special exception to the fence height regulations and a variance to the side yard setback regulations at 5400 Richard Avenue. This property is more fully described as Lot 1, Block 23/1943, and is zoned a CD No. 15, Vickery Place Conservation District, which limits the height of a fence in the side yard to six feet, requires side yard setback of five feet.

LOCATION: 5400 Richard Avenue

REPRESENTATIVE: Jeff Riddle

APPLICANTS: Collin and Shannon Ray

REQUEST:

The applicant proposes to construct an eight-foot-high solid cedar fence in a required side yard, which will require a two-foot special exception to the fence regulations, and to construct a single-family residential structure (pergola and deck) and provide a provide a zero-foot side yard setback, which will require a five-foot variance to the side yard setback regulations.

UPDATE:

On July 19th, Panel A held this case under advisement to allow the representative/applicant to perform outreach to the neighbors and further consider the design of the fence proposed. The representative provided a revised site plan, and elevation showing an open lattice top section of the otherwise solid cedar fence, and a set of two letters in support from neighbors in the immediate vicinity (**Attachments E, F, G**). All updates are highlighted.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION (fence height):

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when *in the opinion of the board*, the special exception will not adversely affect neighboring property. The applicant provided evidence comparing the prospective solid fence with a lattice top section on the secondary frontage of the corner lot, to eight other corner lots in the area with solid fences from six to eight feet-in-height on one of the two street frontages (**Attachment A**).

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:

- (l) In general.

- (xxxiii) 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;
 - (xxxiv) 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
 - (xxxv) 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.
- (J) Structures. In exercising its authority under Subsection (A)(ii), 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:
- (xxxvi) 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;
 - (xxxvii) 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;
 - (xxxviii) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (xxxix) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (xl) the municipality considers the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval.

Rationale:

The applicant provided evidence (**Attachment B**) regarding the removal of shade trees necessitated after they were excessively trimmed from the power line area. The request to encroach into the side yard is specifically to replace the shade once provided by those trees. A certified arborist provided the recommendation to remove the trees for safety (limb failure) concerns. Additionally, staff concluded that the subject site is unique and different from most lots in CD No. 15 considering the height of the house, slight slope, and its restrictive lot area of 8,050 square feet. The applicant submitted evidence (**Attachments B and C**) describing the height of the house and slope created by that height, as well as comparing lot size and developable area within the immediate vicinity and the same zoning district. Per the comparative analysis, the average lot area is 519 square feet larger than the subject site. Thus, in analyzing the comparative properties the restrictive area of the subject site ensures that 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>	Conservation District No. 15
<u>North:</u>	Conservation District No. 15
<u>South:</u>	Conservation District No. 15 and R-7.5(A) Single Family District
<u>East:</u>	Conservation District No. 15
<u>West:</u>	Conservation District No. 15

Land Use:

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

Zoning/BDA History:

1. **BDA212-023:** On June 22, 2022, Panel B denied a variance to the front yard setback regulations at 5253 Bonita Avenue (southwest of the site).
2. **BDA201-056:** On June 23, 2021, Panel B approved a variance to the floor area ratio for an accessory structure at 5434 Willis Avenue (northeast of the site).

GENERAL FACTS /STAFF ANALYSIS:

The subject site is developed with a single-family structure and zoned within CD No. 15, Vickery Place Conservation District. According to DCAD, the site is developed with a one-story, 2,276-square-foot structure erected in 1922. A deck area is noted with 120 square feet of area and a detached garage with 525 square feet. There are two main elements to this request, as noted below.

1. The applicant proposes to replace an existing six-foot-high solid wood privacy fence with an eight-foot-tall solid wood fence along the property line and removed from the visibility triangle to improve visibility, which would require a two-foot special exception to be permitted.

CD No. 15 stipulates that a fence may not exceed six feet above grade when located in the required side yard. The existing six-foot-high solid wood privacy fence in disrepair along the side yard on Glencoe Street currently encroaches into the right-of-way and creates a visual obstruction at the visibility triangle at the alley corner to the southwest. The applicant proposes an eight-foot-tall solid wood fence along the property line and removed from the visibility triangle to improve visibility, which would require a two-foot special exception to be permitted.

A site plan provided with the application materials shows the fence proposed as an eight-foot-tall BOB (board-on-board) cedar fence along the lot line and obstructing the 20-foot visibility triangle at the southwest corner of Glencoe Street and the alleyway. However, the applicant decided to withdraw the visual obstruction request before notification. A revised site plan shows the unobstructed visibility triangle. Overall, the site plan shows the solid fence following the property line, now removed from the right-of-way when compared to the survey in evidence (p. 4, **Attachment B**).

On July 21, 2022, the representative provided a revised site plan and elevation with a drawing showing how the fence will be constructed with the top two feet having an open lattice design (**Attachments E, F, G**).

Staff conducted a field visit of the site and surrounding area and noticed other fences within a 200-foot radius of the property that seemed taller than four feet-in-height and solid in nature located in obvious side yards. The applicant provided evidence comparing the prospective solid fence on the secondary frontage of the corner lot, to eight other corner lots in the area with solid fences from six to eight feet-in-height on one of the two street frontages (**Attachment A**).

The applicant has the burden of proof in establishing that the special exception to the fence height regulation of up to two feet in the required side yard will not adversely affect neighboring properties.

As of August 5, 2022, staff has received a petition/two letters of support and none in opposition regarding this request.

2. The applicant proposes to replace the existing uncovered deck with a composite deck, outdoor kitchen, and two-tiered pergola structure for partial shade within the entire five-foot side yard setback along Glencoe Street.

Lots in CD No. 15 are a minimum of 7,500 square feet in area. Staff concluded that the subject site is unique and different from other corner lots in CD No. 15 considering the height of the house, slight slope, and its restrictive lot area of 8,050 square feet. The applicant submitted evidence (**Attachments B and C**) describing the height of the house and slope created by that height, as well as comparing lot size and developable area within the immediate vicinity and the same zoning district. Per the comparative analysis, the other properties ranged in lot area from 8,172 to 9,350 square feet. Overall, the subject site is an average of 519 square feet smaller than those other corner lots with the same zoning. Additionally, the CD zoning requires a different side yard setback for the east and west sides of a lot. The subject site fronts along Glencoe Street to the west, making the more restrictive side yard setback applicable to the existing deck area. Thus, in analyzing the comparative properties the restrictive area of the subject site and application of the most restrictive side yard setback ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

The 100-year-old layout of the property has included the shade provided over the existing deck area for decades. The applicant provided evidence (**Attachment B**) regarding the removal of shade trees necessitated after they were excessively trimmed from the power line area. The request to encroach into the side yard is specifically to replace the shade once provided by those trees. A certified arborist provided the recommendation to remove the trees for safety (limb failure) concerns.

A site plan submitted indicates the deck area is being replaced with composite material and expanded to now include an outdoor kitchen with a relocated entry from the house. The deck area and pergolas reach up to the fence, which is located along the property line. Elevation plans submitted depict a two-tiered pergola reaching a maximum height of about 12 feet would cover the new deck to replace the existing shade of trees which must be removed.

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.

If the board were to grant the special exception and variance requests and impose the **July 21st** revised site plan and elevation as conditions, the proposed deck, outdoor kitchen, and two-tiered pergola, and fence structures located along the lot line and within the side yard setback along the Glencoe Street would be limited to what is shown on these documents. Additionally, the applicant has the burden of proof in establishing how granting the special exception to allow the fence in the side yard will not adversely affect neighboring properties. Finally, no additional relief is provided with this request.

Timeline:

May 5, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents (**Attachment A**) which have been included as part of this case report.

May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

June 13, 2022: The Board Chief Planner emailed the 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 June 29th deadline to submit additional evidence for staff to factor into their analysis; and the July 8th 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.”

- June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Chief Arborist, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.
- July 5, 2022: The representative provided evidence (**Attachments B and C**).
- July 20, 2022: A minor correction was made to the BO report (**Attachment D**).
- July 21, 2022: The representative provided a revised site and elevation plans which depict the top two feet of the fence as open/lattice material (**Attachments E, F, G**). A petition/two letters of support were also provided (**Attachment H**).

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: Jeffery Riddle 34 Bunker Hill Richardson, TX

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 212-060 hold this matter under advisement until August 16, 2022.

SECONDED: Fleming

AYES: 5 – Lamb, Finney, Fleming, Glover, Neumann

NAYS: 0 –

MOTION PASSED: 5 - 0 (unanimously)

****The first motion per Lamb and seconded by Glover to Deny without prejudice failed 2-3 with Neumann, Finney and Fleming in opposition. The second motion per Neumann and seconded by Fleming to Grant failed 3-2 with Lamb and Glover in opposition****

BOARD OF ADJUSTMENT ACTION: August 16, 2022

APPEARING IN FAVOR: Jeffery Riddle 34 Bunker Hill Richardson TX

APPEARING IN OPPOSITION: None

MOTION#1: Halcomb

I move that the Board of Adjustment, in Appeal No. BDA 212-060, on application of Colin and Shannon Ray by represented Jeffery Riddle, **grant** the request of this applicant to construct and/or maintain an eight-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Narey

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 -0 (unanimously)

MOTION#2: Halcomb

I move that the Board of Adjustment, in Appeal No. BDA 212-060, on application of Colin and Shannon Ray represented by Jeffery Riddle, **grant** the five-foot variance to the side yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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: Narey

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 -0 (unanimously)

FILE NUMBER: BDA212-063(PD)

BUILDING OFFICIAL’S REPORT: Application of Texas Permit LLC – Janet Sipes represented by Rob Baldwin of Baldwin Associates for a variance to the FAR floor area ratio regulations at 8939 Diceman Drive. This property is more fully described as Lot 19 in City Block E/5294 and is zoned an R-7.5(A) Single Family District, which limits the floor area of an accessory structure not to exceed 25 percent of the floor area of the main structure. The applicant proposes to construct and maintain an accessory structure with a floor area of 600 square feet or 45 percent FAR of the 1,345-square-foot floor area of the main structure. As proposed, the request will require a 263.75-square-foot variance to the maximum floor area ratio regulations for an accessory structure.

LOCATION: 8939 Diceman Drive

APPLICANT: Texas Permit LLC – Janet Sipes

REPRESENTATIVE: Rob Baldwin of Baldwin Associates

REQUESTS:

The applicant proposes to construct and maintain an accessory structure with approximately 600 square feet of floor area on a site developed with a single-family dwelling and an existing detached garage.

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:

(K) In general.

- (xli) 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;
- (xlii) 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
- (xliii) 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.

(L) Structures. In exercising its authority under Subsection (A)(ii), 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:

- (xliv) 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;
- (xlv) 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;
- (xlvi) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (xlvii) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (xlviii) the municipality considers the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Denial.

Rationale:

Staff has not received evidence. Therefore, staff cannot justify whether the subject site is restrictive in area, shape, or slope, and thus cannot be developed in a manner commensurate with other properties within the same zoning district.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The request for a variance to the maximum floor area ratio regulations to the single-family use regulations focuses on constructing and maintaining a 600-square-foot accessory structure on a property zoned an R-7.5(A) Single Family District. In this district, an accessory structure cannot exceed 25 percent of the maximum floor area of the main building.

DCAD records indicate the following improvements for the property located at 8939 Diceman Drive: “main improvement: a structure with 1,024 square feet of living area built-in 1949” and “additional improvements: a 276-square-foot detached garage. However, the site plan provided reflects the proposed built environment depicting a new deck with approximately 416 square feet of floor area, the detached garage, and accessory structure. Internal records reflect applications for the demolition of an existing covered patio and the detached garage were submitted on March 12, 2022 and permits consistent with the Board site plan for the addition of the proposed accessory structure, deck, and detached garage.

The property is rectangular in shape, flat, and according to the application, contains 0.175 acres, or approximately 7,623 square feet in area. In an R-7.5(A) Single Family District the minimum lot size is 7,500 square feet. Since evidence was not provided staff cannot determine whether the subject site 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 district.

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 August 5, 2022, no letters have been submitted in support of or in opposition to the request.

If the board were to grant the variance to the maximum floor area ratio regulations for structures accessory to a single-family use 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 this request will not provide any relief to the Dallas Development Code regulations other than allowing an accessory structure 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 if each are approved by the board.

Timeline:

- May 6, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 11, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 11, 2022: The Board Senior Planner emailed the 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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.”

July 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Conservation District Senior Planner, and the Development Services Chief Planner. No comment sheets were submitted regarding this request.

BOARD OF ADJUSTMENT ACTION: August 16, 2022

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

APPEARING IN OPPOSITION: None

MOTION: Frankford

I move that the Board of Adjustment, in Appeal No. BDA 212-063, on application of Janet Sipes represented by Rob Baldwin, **grant** the 263.75-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: Brooks

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 -0 (unanimously)

MOTION: Neumann

I move to adjourn the Panel A hearing

SECONDED: Halcomb

AYES: 5 – Brooks, Halcomb, Narey, Frankford, Neumann

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

Recess - 12:29 p.m.

Resume- 12:40 p.m.

7:17 P.M. Board Meeting adjourned for August 16, 2022

Tom Allen

CHAIRPERSON

Mia

BOARD ADMINISTRATOR

John

BOARD SECRETARY

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