

RECEIVED

BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE  
WEDNESDAY, AUGUST 17, 2022

2022 SEP 23 PM 04: 25

CITY SECRETARY  
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Joseph Cannon, regular member, Herlinda Resendiz, regular member, and Michael Karnowski, regular member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Joseph Cannon, regular member, Herlinda Resendiz, regular member, and Michael Karnowski, regular member

MEMBERS ABSENT FROM HEARING: None.

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

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

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11:08 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's August 17, 2022 docket.

**BOARD OF ADJUSTMENT ACTION: August 17, 2022**

1:12 P.M.

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

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel B, June 22, 2022 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: August 17, 2022**

**MOTION: Cannon**

Approval of the Board of Adjustment Panel B, June 22, 2022 public hearing minutes.

**SECONDED: Shouse**

**AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon**

**NAYS: 0 -**

**MOTION PASSED: 5 - 0 (unanimously)**

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**FILE NUMBER: BDA212-056(JM)**

**BUILDING OFFICIAL’S REPORT:** Application of Parks 1420 LLC and Kessler Bluff LLC represented by Scott Parks for a variance to the front yard setback regulations at 2016 Kessler Parkway. This property is more fully described as Lot D1, Block 13/3800, and is zoned Subarea 3 within CD No. 13, Kessler Park Conservation District, which requires a front yard setback of 35 feet.

**LOCATION: 2016 Kessler Parkway**

**APPLICANT: Parks 1420 LLC and Kessler Bluff LLC**

**REPRESENTATIVE: Scott Parks**

**REQUEST:**

The applicant proposes to construct a single-family residential structure and provide a 16-foot front yard setback, which will require a 19-foot variance to the front yard setback regulations. The subject site was last granted a 16-foot front yard variance and a four-foot parking setback variance. However, a permit was not requested within 180 days of the board’s decision, terminating the action. The applicant will comply with the parking setback, but has increased the front yard variance by three feet.

**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:

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

**STAFF RECOMMENDATION:**

Approval

Rationale:

Staff concluded that the subject site is unique considering the evidence (**Attachment A**) which demonstrates the site’s unique topography. The applicant argues that due to the escarpment zone and cliff generating sloping challenges, the site cannot be developed without the front yard setback variance; however, no comparative list of properties was provided to confirm how the property is different from most lots in Subarea 3 within CD No. 13.

The previous property owners submitted a list of comparative properties when the last variances were granted in 2018 (**Attachment B**). In that list of 22 properties, only the floor area was provided and ranged from 2,807 and 3,880 square feet in floor area. The last site plan approved was for a main structure with up to 3,000 square feet of floor area. The new property owner has cleared a section of bamboo which permitted additional floor area in the second story of the house. The new floor area requested for the main structure is 4,507 square feet. While this number is greater than the surrounding properties from 2018, the applicant is still seeking to only develop 25 percent of the lot, where the district allows for up to 45 percent lot coverage.

This means that all existing property owners could apply for additional improvements and increase their floor area depending on the size of their lots. While the subject site has been maxed out at the 25 percent proposed due to the topography of the site. This means that the site cannot be developed in manner commensurate with others with the same zoning due to the topography causing a restrictive developable area.

## **BACKGROUND INFORMATION:**

### **Zoning:**

|               |  |
|---------------|--|
| <u>Site:</u>  | Subarea 3 within CD No. 13, the Kessler Park Conservation District |
| <u>North:</u> | Subarea 3 within CD No. 13, the Kessler Park Conservation District |
| <u>South:</u> | Subarea 1 within CD No. 13, the Kessler Park Conservation District |
| <u>East:</u>  | Subarea 3 within CD No. 13, the Kessler Park Conservation District |
| <u>West:</u>  | Subarea 3 within CD No. 13, the Kessler Park Conservation District |

### **Land Use:**

The subject site is undeveloped. Surrounding properties to the west, east, and south are developed with single-family uses. Across Kessler Parkway is the golf course and a park/trail. Farther northwest on N. Edgefield Avenue is a multifamily development.

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

There have been two recent related board cases **on the subject property** within the last five years.

1. **BDA178-033:** On March 21, 2018, Panel B denied a variance to the front yard setback and a variance to the off-street parking requirements without prejudice.
2. **BDA178-070:** On June 20, 2018, Panel B granted a 16-foot front yard variance and a four-foot parking setback variance. However, a permit was not requested within 180 days of the board's decision, terminating the action.

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

The request for a variance to the front yard setback regulations focuses on constructing and maintaining a two-story, single-family home with approximately 4,507 square feet of floor area, a 528-square-foot garage, and a 168-square-foot covered balcony on an undeveloped site that is proposed to be located 16 feet from the front property line or 19 feet into the required 35-foot front yard setback.

The subject property zoned Subarea 3 within Conservation District No. 13. In this district, the minimum front yard must equal the average of the front yards of the houses on contiguous lots. A survey (survey in **Attachment A**) submitted by the applicant confirms the front yard setback for this lot is 35 feet.

The proposed site plan and supporting evidence (elevations in **Attachment A**) indicate the applicant is seeking to develop a single-family structure with two stories, nestled into the natural topography of the site.

The subject site is sloped, irregular in shape, and approximately 12,226 square feet in area. Prior to the creation of CD No. 13 in 2005, the subject site and surrounding properties had been zoned an R-7.5(A) Single Family District where the typical lot size is 7,500 square feet and where the front yard setback was 25 feet. While the minimum lot size remains 7,500 square feet in Subarea 3 within CD No. 13, the front yard setback was increased by 10 feet due to the averaging requirement. Additionally, there is a cliff on the property that requires the addition of a retaining wall 50 feet from the front lot line on Kessler Parkway. Of those 50 feet, the required setback of 35 feet would be eliminating the ability to develop the site without encroaching onto the required front yard setback.

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, staff has not received letters regarding the request.

If the board were to grant the variance to the front yard setback and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on this document. However, granting this variance will not provide any relief to the Dallas Development Code regulations other than allowing the structure on the site to encroach into the front yard setback as depicted on the site plan (i.e. development on the site must meet all other code requirements).

**Timeline:**

April 25, 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 B.

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 27, 2022                      The applicant provided evidence to prove the variance hardship criteria (**Attachment A**).

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 17, 2022**

**APPEARING IN FAVOR:**                      Robert D'Auignon 453 Canterbury Dallas, TX

**APPEARING IN OPPOSITION:**                      None.

**MOTION: Cannon**

I move that the Board of Adjustment **grant** the following applications listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code, as applicable to wit:

**BDA 212-056**—Application of Parks 1420 LLC and Kessler Bluff LLC represented by Scott Parks for a variance to the front yard setback regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with the submitted site plan is required.

**SECONDED: Karnowski**

**AYES:** 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

**NAYS:** 0 -

**MOTION PASSED:** 5 - 0 (unanimously)

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**FILE NUMBER:** BDA212-068(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Veronica Salinas for a special exception to the fence height regulations at 2022 Woody Road. This property is more fully described as Tract 306, Block 8812, and is zoned an R-10(A) Single Family District, which limits the height of a fence in the front yard to four feet.

**LOCATION:** 2022 Woody Road

**APPLICANT:** Veronica Salinas

**REQUEST:**

The applicant proposes to construct a six-foot fence with an eight-foot gate in a required front yard, which will require a four-foot special exception to the fence 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:**

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 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-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.

The request for a special exception to the fence height regulations is made to construct and maintain a six-foot-tall fence with an eight-foot-tall gate which will require a four-foot special exception.

According to DCAD, the property contains 2.68 acres and is developed with a one-story, 2,129-square-foot single-family structure constructed in 1966. Additional improvements include a 400-square-foot storage building and 560-square-foot detached garage.

According to the elevation plan submitted, the applicant proposes a wrought iron fence with a maximum height of six feet, and a 16-foot-wide gate, eight-feet-in-height.

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

- The proposed fence with access gates along Woody Road runs along the front lot line 209.35 feet.
- The portion of the fence where the iron gate is proposed is located or setback about 25 feet from the front lot line and about 48 feet from the back of curb.

As of August 5, 2022, 10 letters have been submitted in support of the request and none in opposition to the request.

The applicant has the burden of proof in establishing that the special exception to the fence standards related to the height of eight feet located on Woody Road will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to the height would require the proposal exceeding four feet-in-height in the front yard setback located along Woody Road to be maintained in the locations and heights as shown on the site plan and elevation plan. However, granting this request will not provide any relief to the Dallas Development Code regulations other than allowing the additional height for the fence structure.

**Timeline:**

- January 4, 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 B.
- 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 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.
- August 3, 2022: The representative submitted evidence (**Attachment A**).

**BOARD OF ADJUSTMENT ACTION: August 17, 2022**

APPEARING IN FAVOR: Josh Lecomte 5740 Prospect Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Cannon

I move that the Board of Adjustment **grant** the following applications listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code, as applicable to wit:

**BDA 212-068**— Application of Veronica Salinas for a special exception to the fence height standards contained in the Dallas Development Code is granted subject to the following condition:

Compliance with the submitted site plan and elevation is required.

**SECONDED: Karnowski**

**AYES:** 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

**NAYS:** 0-

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA212-077(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Terri Hodge for a special exception to the fence height regulations at 11211 Strait Lane. This property is more fully described as Lot 3 in City Block 1/6391 and is zoned an R-1/2ac(A) Single Family District within Tract No. 1 of NSO No. 1, the Northaven Estates Neighborhood Stabilization Overlay, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct a seven-foot-tall fence in a required front yard, which will require a three-foot special exception to the fence regulations.

**LOCATION:** 11211 Strait Lane

**APPLICANT:** Terri Hodge

**REQUEST:**

The applicant proposes a fence of seven feet in height, constructed of an iron fence with two iron vehicular sliding gates located along Strait Lane. The site is constructed with a one-story single-family dwelling unit.

**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-1/2ac(A) (Single Family District) and NSO 1 Tract 1  
Northwest: R-1/2ac(A) (Single Family District) and NSO 1 Tract 1  
East: R-1/2ac(A) (Single Family District) and NSO 1 Tract 1  
South: R-1/2ac(A) (Single Family District) and NSO 1 Tract 1  
West: R-1/2ac(A) (Single Family District) and NSO 1 Tract 1

### **Land Use:**

The subject site is constructed with a single family use. Surrounding properties to the east, south, and west are developed with single-family uses while the property to the north is undeveloped.

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

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

1. **BDA212-052:** On July 19, 2022, the Panel A, Board of Adjustment heard and held under advisement until August 16, 2022, a request for special exceptions to the fence standards and the visibility obstruction regulations to construct and maintain an eight-foot-six-inch-tall fence located within two visibility obstruction triangles at 4630 Northaven Road.

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

The subject site is zoned an R-1/2ac(A) Single Family District and NSO 1 Tract 1 and requires a minimum front yard setback of 40 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.

The request for a special exception to the fence height regulations is proposed to construct and maintain a seven-foot-high fence in a designated front yard setback along Strait Lane. According to the elevation plan, the applicant proposes a seven-foot-tall black iron fence with two black iron vehicular gates at the drive approaches with a maximum length of 351.76 feet and spans the entire length of the property.

Per Dallas County Appraisal District records, the property is developed with a one-story single-family dwelling unit constructed in 1953. The single-family dwelling unit consists of approximately 3,425 square feet of floor area with a circular driveway.

The following information is shown on the submitted site plan:

- The proposed fence is approximately 351.76 feet-in-length parallel to Strait Lane and half a foot from the property line with the two vehicular gates proposed to be setback 14.5 feet and outside of the 20-foot visibility triangles.

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 seven feet located on Strait Lane will not adversely affect neighboring properties.

Granting the special exception to the fence standards relating to height would require the proposal exceeding four feet-in-height in the front yard setback located along Strait Lane to be maintained in the locations and heights as shown on the site plan and elevation plan.

**Timeline:**

- May 13, 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 B.
- 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 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- 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 Board Senior Planner, the Development Services Chief Arborist, the Development Services Conservation District Senior Plans Examiner, and Development Services Chief Planner. No review sheets were submitted for this request.
- August 5, 2022: The representative submitted documentary evidence (**Attachment A**) for Board consideration.

**BOARD OF ADJUSTMENT ACTION: August 17, 2022**

**APPEARING IN FAVOR:** Terri Hodge 7106 Abrams Rd. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: **Karnowski**

I move that the Board of Adjustment in Appeal No. BDA 212-077 **hold** this matter under advisement until **September 21, 2022**.

SECONDED: **Cannon**

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

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FILE NUMBER: BDA212-071(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Rob Baldwin of Baldwin Associates for a variance to the front yard setback regulations at 304 S. Beacon Street. This property is more fully described as a part of Tract 2 in City Block 698 and is zoned a D(A) Duplex District, which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a duplex dwelling structure and provide an 11-foot front yard setback, which will require a 14-foot variance to the front yard setback regulations.

LOCATION: 304 S. Beacon Street

APPLICANT: Rob Baldwin of Baldwin Associates, LLC

**REQUESTS:**

A request for a variance to the front yard setback regulations of 11 feet is made to construct and maintain a duplex structure containing two dwelling units on a site that is currently undeveloped and situated along the intersection of Sante Fe Avenue and S. Beacon Street.

**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.
  - (iv) 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;
  - (v) 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

- (vi) 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:
- (vii) 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;
  - (viii) 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;
  - (ix) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - (x) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - (xi) the municipality considers the structure to be a nonconforming structure.

**STAFF RECOMMENDATION:**

Denial.

Rationale:

Staff has not received evidence. Therefore, staff cannot establish 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: Site: D(A) Duplex District  
North: D(A) Duplex District  
East: D(A) Duplex District  
South: D(A) Duplex District  
SE: Subarea A w/in PDD No. 134  
SW: Subarea A w/in PDD No. 134  
West: D(A) Duplex District  
NW: D(A) Duplex District

**Land Use:**

The subject site is undeveloped and surrounding properties are largely developed with single family uses while the property immediately adjacent to the south is developed with a trail (Santa Fe Trail) and the property to the southeast is developed with an auto-related use.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

This request focuses on constructing and maintaining a duplex structure with two dwelling units situated along a front yard (S. Beacon Street). Since the subject site is zoned a D(A) Duplex District, a 25-foot front yard setback must be maintained along both frontages to ensure continuity of the block. The lot is situated at the intersection of S. Beacon Street and Sante Fe Avenue, which requires two front yards, one along each corridor to maintain block continuity.

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, S Beacon Street 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 s. Beacon Street and provides a front yard setback of 25 feet this front yard setback must be maintained for continuity of the blackface.

A site plan has been submitted denoting the proposed two-story, duplex dwelling unit located eleven feet from the front property line along S. Beacon Street and containing approximately 4,909 square feet of floor area, combined. The portion of the single-family structures fronting along Sante Fe Avenue is not proposed to encroach into the front yard setback and will provide a front yard setback of 27-feet-eleven-inches while the portion of the structure along S. Beacon Street will encroach into the required 25-foot front yard setback and provide a front yard setback of eleven feet.

The subject site is not irregular in shape or area with approximately 12,632.4 square feet in lot area. A D(A) Duplex zoning district requires lots to have a minimum lot size of 6,000 square feet. However, the applicant has not provided evidence that reflects the decrease in buildable lot area due to the double frontage.

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 D(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 D(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 nor in opposition of the request.

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

**Timeline:**

- June 9, 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 B.
- July 11, 2022: The Board of Adjustment 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 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- 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 of Adjustment Senior Planner, the Development Services Chief Arborist, the Development Services Chief Planner, and the Development Services Conservation District Senior Planner.
- No review comment sheets were submitted in conjunction with this application.
- August 2, 2022: The representative submitted evidence (**Attachment A**) for Board Consideration.

**BOARD OF ADJUSTMENT ACTION: August 17, 2022**

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

**APPEARING IN OPPOSITION:** None.

**MOTION: Brooks**

I move that the Board of Adjustment, in Appeal No. BDA 212-071, on application of Rob Baldwin, **grant** the 14-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: Shouse**

**AYES:** 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

**NAYS:** 0 -

**MOTION PASSED:** 5 - 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA212-035(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Rob Baldwin of Baldwin Associates for a variance to the building height regulations at 1918 Moser Avenue. This property is more fully described as Lot 5, Block C/1491, and is zoned an MF-2(A) Multifamily District, in which the height of an accessory structure may not exceed the height of the main building. The applicant proposes to construct a single-family residential accessory structure with a building height of 23 feet three inches, which will require a two-foot five-inch variance to the maximum building height regulations.

**LOCATION:** 1918 Moser Avenue

**APPLICANT:** Rob Baldwin of Baldwin Associates

**REQUESTS:**

While the site is zoned a Multifamily District, the land use dictates the height of the accessory structure proposed. Section 51A-4.209(6)(vii)(cc) Height of structure accessory to single family use cannot exceed the height of the main structure. In this case, the height of the main structure is 20 feet 10 inches.

**UPDATE:**

On May 18 and June 22, 2022, this case was held under advisement. No updates have been provided.

**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.

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

**STAFF RECOMMENDATION:**

Denial.

Rationale:

Evidence provided identified 10 single-family uses and structures in the same zoning district and adjacent to the site. The average of the main structure floor area is 3,016 square feet and the applicant maintains a main structure with 1,908 square feet of floor area. Additionally, of those 10 properties four maintain accessory structures (including the subject site and structure in the request) with an average of 1,382 square feet of floor area. The subject accessory structure is 777 square feet in size. No height data was provided in comparison to the other accessory structures or main structures.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: MF-2(A) Multifamily District

Northwest: MF-2(A) Multifamily District

Northeast: Planned Development District No. 462

Southeast: MF-2(A) Multifamily District

Southwest: MF-2(A) Multifamily District

**Land Use:**

The subject site and properties to the northwest and southeast contain single-family uses. Additionally, to the northeast is a commercial use and to the southwest is multifamily.

**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 applicant proposes to construct a single-family residential accessory structure with a building height of 23 feet three inches, which will require a two-foot five-inch variance to the maximum building height regulations for a single-family accessory structure. The property is zoned an MF-2(A) Multifamily District. In this district, a single-family use is allowed to have accessory structures that cannot exceed the height of the main building. The main structure is 20 feet three inches-in-height.

DCAD records indicate the main structure contains 1,908 square feet of floor area erected in 1923. An accessory structure with a detached garage of 441 square feet and detached quarters with 336 square feet are also identified, however the date of construction is not noted.

The MF-2(A) District allows more than one dwelling unit per lot. While the application and DCAD refer to a second dwelling unit, the floor plan provided as a reference identifies the first floor as a garage and the second floor as storage space. In either case, this request is for the height of an accessory structure, solely. A search of City permit records confirms the 2021 building permit for this structure is for a detached garage with storage, not a second dwelling unit. As an accessory structure, the height cannot exceed the height of the main structure.

The property is rectangular in shape, flat, and according to the application, contains 0.2 acres, or approximately 8,500 square feet in area. In an MF-2(A) Multifamily District the minimum lot size varies by use. A single-family use in this district requires a minimum lot size of 1,000 square feet. The evidence provided did not allow for staff to 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, three letters have been submitted in support and one letter in opposition to the request.

If the board were to grant the variance to the maximum height regulations for structures accessory to a single-family use and impose the submitted site plan and elevation as conditions, the building footprint of the structure on the site and height as identified in the elevation would be limited to what is shown on these documents. However, granting this request will not provide any relief to the Dallas Development Code regulations other than allowing the additional height for the accessory structure, as depicted on the site plan and elevation.

**Timeline:**

February 11, 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 B.

April 5, 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 April 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. 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 Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board. No review comments were submitted regarding this request.

April 28, 2022: The applicant provided evidence via email (**Attachment A**).

May 18, 2022: Panel B held this case to June 22, 2022.

June 10, 2022: No updates had been provided by the docket deadline.

August 5, 2022: No updates had been provided by the docket deadline.

BOARD OF ADJUSTMENT ACTION: June 22, 2022

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

APPEARING IN OPPOSITION: None.

MOTION: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 212-035, hold this matter under advisement until August 17, 2022.

SECONDED: Brooks

AYES: 5 – Shouse, Finney, Gambow, Brooks, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: May 18, 2022

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

APPEARING IN OPPOSITION: None.

MOTION: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 212-035, hold this matter under advisement until June 22, 2022.

SECONDED: Shouse

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz,

NAYS: 0 -

MOTION PASSED: 4 - 0 (unanimously)

\*\*\* The 1<sup>st</sup> motion was withdrawn to Grant\*\*\*

\*\*Board member, Joe Cannon recused himself from case BDA212-035 due to conflict of interest\*\*

**BOARD OF ADJUSTMENT ACTION: August 17, 2022**

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

APPEARING IN OPPOSITION: None.

**MOTION: Gambow**

I move that the Board of Adjustment, in Appeal No. BDA 212-035, on application of Rob Baldwin, **grant** the two-foot five-inch variance to the height for structures accessory to the main use 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 and elevation is required.

**SECONDED: Brooks**

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

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**MOTION: Gambow**

I move to adjourn the Panel B hearing.

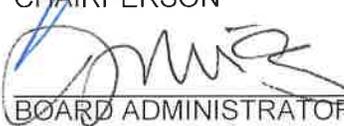
**SECONDED: Cannon**

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

The meeting was adjourned at 1:57 P.M. on August 17, 2022.

  
\_\_\_\_\_  
CHAIRPERSON  
  
\_\_\_\_\_  
BOARD ADMINISTRATOR  
  
\_\_\_\_\_  
BOARD SECRETARY

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