

BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
MONDAY, AUGUST 15, 2022

CITY SECRETARY
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Rodney Milliken, regular member, Judy Pollock, regular member, and Jared Slade, regular member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Rodney Milliken, regular member, Judy Pollock, regular member, and Jared Slade, regular member

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Attorney, Jason Pool, Senior Planner/meeting moderator, LaTonia Jackson, Board Secretary, David Nevarez, Senior Traffic Engineer, Sarah May, Chief Planner and Andreea Udrea, Assistant Director.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Attorney, Jason Pool, Senior Planner/meeting moderator, LaTonia Jackson, Board Secretary, David Nevarez, Senior Traffic Engineer, Sarah May, Chief Planner and Andreea Udrea, Assistant Director.

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, August 15, 2022 docket.

BOARD OF ADJUSTMENT ACTION: August 15, 2022

1:06 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C June 23, 2022 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: August 15, 2022

MOTION: Pollock

Approval of the Board of Adjustment Panel C June 23, 2022 public hearing minutes.

SECONDED: Agnich

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-070(PD)

BUILDING OFFICIAL’S REPORT: Application of Herlinda Sanchez for a special exception to the single-family use regulations at 9014 Winterset Avenue. This property is more fully described as Lot 22, within City Block J/7590 and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one. The applicant proposes to construct and maintain an ADU additional dwelling unit (not for rent). As proposed, the request will require a special exception to the single-family use regulations for an additional dwelling unit.

LOCATION: 9014 Winterset Avenue

APPLICANT: Herlinda Sanchez

REQUEST:

The applicant proposes to construct and maintain an additional dwelling unit (not for rent) on a site developed with a single-family dwelling along the southeastern portion of the lot.

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

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

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

STAFF RECOMMENDATION:

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

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 special exception to the single-family use regulations focuses on constructing and maintaining an additional dwelling unit (not for rent) on a property zoned an R-7.5(A) Single Family District. In this district, one dwelling unit is allowed per lot.

DCAD records indicate the following improvements for the property located at 1914 Winterset Avenue: “main improvement: a structure with 1,497 square feet of living area built-in 2018” and “additional improvements: an attached garage with 420 square feet of area.”

The property is rectangular in shape, flat, and according to the application, contains 0.46 acres, or approximately 20,000 square feet in area. In an R-7.5(A) Single Family District the minimum lot size is 7,500 square feet.

The following information is shown on the submitted site plan:

- The proposed accessory structure is located approximately 22 feet along the rear of the main structure and is approximately seven feet from the western side yard setback, approximately 68 feet from the eastern side yard setback, and approximately 65 feet from the rear yard setback.
- The structure is proposed with a maximum floor area of approximately 475 square feet with an attached two-car garage consisting of approximately 475 square feet.

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 the special exception for an additional dwelling unit 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. Furthermore, if the board were to grant the special exception to allow the ADU, the Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

However, granting the request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all other code requirements), as depicted on the site plan, if approved by the board.

Timeline:

June 10, 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 C.

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 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 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 applicant submitted evidence for the board's consideration (Attachment A).

BOARD OF ADJUSTMENT ACTION: August 15, 2022

APPEARING IN FAVOR: Salvador Perez 9014 Winterset Ave. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 212-070, on application of Herlinda Sanchez, **grant** the request for a special exception to the single-family use regulations in the Dallas Development Code subject to the following conditions:

Compliance with the submitted site plan is required; and

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

SECONDED: Sashington

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

NAYS: 0 –

MOTION PASSED (unanimously): 5-0

FILE NUMBER: BDA212-012(PD)

BUILDING OFFICIAL'S REPORT: Application of Elizabeth Alvarez Villaizan for a 12-foot-six-inch side yard variance, which will require a seven-foot-six-inch variance, a variance to construct and maintain a general merchandise or food store 3,500 square feet or less use, and a motor vehicle fueling station use and provide eight of the required 12 off-street parking spaces, which will require a four-space variance (33 percent reduction) to the off-street parking regulations, **and a special exception to the landscape requirements** at 3900 N. Hampton Road. This property is more fully described as Lots 18 and 19 in City Block 11/7130 and is zoned a CR Community Retail District which requires compliance with off-street parking regulations per the use.

LOCATION: 3900 N. Hampton Road

APPLICANT: Elizabeth Alvarez Villaizan

REQUEST:

A request for **a special exception to the landscape requirement** and variances to the side yard setback and the off-street parking regulations is made to maintain a general merchandise or food store 3,500 square feet or less use, and a motor vehicle fueling station use [Shell Station]

and provide eight of the required 12 off-street parking spaces. An addition was made to the general merchandise or food store 3,500 square feet or less use to provide for expansion of the service, but no additional off-street parking spaces were added.

UPDATE:

On April 29th, the representative conceded that the site does not have sufficient area to provide the residential buffer zone along the eastern portion of the site and the street buffer zone along the western portion of the site. Therefore, the representative requested a date and time to append the Board application to include a request for a special exception to the landscape requirement. However, the deadline to provide revisions to staff was 1:00p.m. on April 27th. Since the representative missed the deadline to provide an alternate landscape plan for review and approval by staff, the representative requested a postponement to the **August hearing to work with the Chief Arborist and provide an alternate landscape plan that meets the spirit of the Article. All new information is highlighted throughout the report.**

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.

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

(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 (side yard variance):

Approval, subject to compliance with the submitted site plan.

Rationale:

Staff concludes that the subject site is unique and different from most lots in the CR Community Retail District considering its restrictive lot area of 14,008 square feet. The applicant submitted a document (**Attachment A**) comparing lot size/area of six properties within the same zoning district. Per the comparative analysis, the average lot area is 34,609 square feet. 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.

STAFF RECOMMENDATION (off-street parking variance):

Approval.

Rationale:

Internal records show that permits were approved on April 19, 2018. The approved plans reflected an addition of 279 square feet and the provision of seven off-street parking spaces to meet the off-street parking requirement of one space per every 200 square feet of floor area ($279+810=1089/200=5.4$ or five required spaces plus two additional spaces for the fueling station). A subsequent inspection found a greater addition was constructed with 1,132 square feet of floor area in lieu of the approved one of 279 square feet. The greater floor area of the structure then triggered a much greater requirement in the off-street parking requirement of 12 spaces rather than the seven-existing on-site in 2018. As a result, staff concludes that the requested variance to provide eight of the required 12 off-street parking spaces, which will require a four-space variance (33 percent reduction) to the off-street parking regulations.

To assist the board in its decision-making, the Senior Engineer within the Transportation Development Services Division Department of Transportation reviewed the area of request and information provided by the applicant. A comment sheet (**Attachment B**) submitted in review of the request reflects a recommendation of “no objection” with a comment that the site plan must meet City standards as outlined below.

- No driveways allowed closer than 55 feet from intersection
- Number of driveway approaches must be minimized
- Must restore curbs for all abandoned driveway approaches
- Sidewalk and barrier free ramp requirements apply
- Driveway width and design standards apply

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented 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 property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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:

The City of Dallas chief arborist submitted a memo regarding the applicant's request and recommending approval (**Attachment E**) subject to conditions for the provision of an automatic irrigation system for the maintenance of the trees, shrubs, and grass in the residential buffer zone area.

Rationale:

- The chief arborist recommends approval of the proposed alternate landscape plan. This opinion is based on the application of city zoning regulations that define the allowable scope of development on the small landscape area to the north, east of the building a landscape area extends along the space south of the grease trap service area creating a partial residential zone, where strict compliance with full landscape requirements will unreasonably burden the use of the property.

BACKGROUND INFORMATION:

Zoning:

Site: CR Community Retail District
North: CR-D Community Retail District w/a D Liquor Control Overlay
East: R-5(A) Single Family District
South: CR Community Retail District
West: Tract 7 within PDD No. 508

Land Use:

The subject site is developed with a general merchandise or food store 3,500 square feet or less use, and a motor vehicle fueling station use [Shell Station]. The property to the north is developed with an office use; immediately adjacent to the east is undeveloped; to the south across Leath Street is developed with an auto-related use; and, to the west across N. Hampton Road is developed with a utility or government installation other than listed [Dallas Housing Authority].

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

A request for a variance to construct and maintain a general merchandise or food store 3,500 square feet or less use and a motor vehicle fueling station use and a variance to the off-street parking regulations of four spaces is made to maintain a general merchandise or food store 3,500 square feet or less use and a motor vehicle fueling station use [Shell Station] and provide eight of the required 12 off-street parking spaces. An addition was made to the general merchandise use to provide for expansion of the use; however, no increase to the off-street parking was provided.

The site is zoned a CR Community Retail District, which requires the off-street parking requirements to be provided per Chapter 51A. Accordingly, per SEC 51A-4.210(b)(24), a general merchandise or food store 3,500 square feet or less use off-street parking requirement is one space per 200 square feet of floor area while a motor vehicle fueling station use off-street parking requirement is two spaces. Per the requirement, the proposed 1,932-square-foot general merchandise or food store 3,500 square feet or less use requires 9.66 off-street parking spaces. Since a fraction of a space is unobtainable, the .66 is rounded to the nearest whole number. Thereby, 10 off-street parking spaces are required. Thus, the 10 off-street spaces required in addition to the two off-street spaces for the motor vehicle fueling station use, requires a total of 12 off-street parking spaces for the site.

Additionally, Chapter 51A Sec. 51A-4.122(4)(B)(i) regulates the following **side yard** and rear yard setbacks:

(B) Side and rear yard. Minimum side and rear yard is:

- (i) 20 feet where adjacent to or directly across an alley from R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district; and
- (ii) no minimum in all other cases

According to the proposed site plan provided in review of the request, the general merchandise or food store 3,500 square feet or less use and the motor vehicle fueling station use operated legally under a Certificate of Occupancy granted August 24, 1984 and contained 810 square feet of floor area with seven off-street parking spaces provided. On April 19, 2018, building plans were submitted depicting the existing floor area of 810 square feet and the proposed 279-square-foot addition. Additionally, the existing structure provided the required 20-foot side yard setback along the rear of the structure which is adjacent to the undeveloped single-family district. However, construction of the site failed to ensure compliance of neither the setback of 20-feet for the existing structure nor the addition constructed adjacent to the single-family district with a larger footprint and floor area.

The proposed site plan depicts the addition aligned with the wall of the existing structure which compels staff to question whether the exterior wall of the structure was enlarged to further encroach into the single-family district since the proposed addition was developed along the northern portion of the site in line with the existing 810-square-foot retail structure. One day later, on April 19, 2018, permits were subsequently cancelled along with trade permits (plumbing) and a new application for permits submitted on June 10, 2021, depicting the larger addition and the side yard encroachment.

The applicant submitted revised documents (**Attachment C**) comparing lot size/area of six properties within the same zoning district. Per the comparative analysis, the average lot area is 34,609 square feet while the subject site provides a lot area of 14,008 square feet. 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.

The Senior Engineer within the Transportation Development Services Division Department of Transportation recommends “no objection” of the request (**Attachment B**).

The request for a special exception to the landscape regulations is to construct and maintain the general merchandise or food store 3,500 square feet or less use and a motor vehicle fueling station that will not meet the minimum landscape requirements along the parkway on Leath Street due to an underground water line, visibility triangles, and vehicular maneuvering spaces. Additionally, the site does not comply with Article X residential buffer zone requiring three large trees nor does the site provide any landscape design options.

The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period. In this case, the existing structure increased the floor area with an addition that triggered compliance with landscape regulations.

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

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

The applicant is seeking a special exception to the landscaping requirements of Article X.

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

The proposed landscape plan provides a small landscape area to the north. East of the building a landscape area extends along the space south of the grease trap service area creating a partial residential buffer zone. In the RBZ southeast of the building, two crepe myrtle trees and a short row of shrubs were added. A masonry screen wall separates the buffer from the residential lots to the east.

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

The property does not comply with Article X:

- Requires 4 site trees, provides 2 crepe myrtles.
- Street buffer zone (10.125(b)): None provided. The parkway on Leath Street is encumbered with an underground water line. Visibility triangles and vehicle maneuvering spaces minimize other potential planting locations.
- Residential buffer zone (10.125(b)): Partial provided, excluding the grease trap service area, requires 3 large trees, but provides 2 small trees due to overhead electric lines.
- Landscape design options (10.126): None determined.

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

The chief arborist recommends approval of the proposed alternate landscape plan, subject to conditions for the provision of an automatic irrigation system for the maintenance of the trees, shrubs, and grass in the residential buffer zone area.

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

- The parking demand generated by the general merchandise or food store 3,500 square feet or less use and the motor vehicle fueling station use does not warrant the number of off-street parking spaces required; and,
- The variance of four spaces (or a 33 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- That granting the variance to the side 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 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.

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 nor in opposition of the request.

If the board grants the variances to the side yard setback and off-street parking and the special exception to the landscape regulations and imposes the submitted site plan and alternate landscape plan as conditions, development would be limited to what is shown on these documents. Granting these variances and special exception will not provide any relief to the Dallas Development Code regulations.

Timeline:

Dec. 10, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

- Dec. 28, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- January 3, 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 January 26th deadline to submit additional evidence for staff to factor into their analysis; and the February 11th 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."
- January 27, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board.
- February 7, 2022: The representative submitted evidence (**Attachment A**) for staff consideration.
- February 16, 2022: The representative submitted an email requesting a postponement to the Panel C Board of Adjustment hearing to March.
- March 14, 2022: The Senior Engineer within the Transportation Development Services Division of the Department of Transportation recommends "no objection" the request (**Attachment B**).
- March 21, 2022: The applicant requested a postponement to the Panel C Board of Adjustment hearing to May.
- March 24, 2022: Staff informed the representative that the subject site triggered compliance with Article X.
- April 27, 2022: The representative provided revised evidence to staff (**Attachment C**) for staff consideration.
- July 11, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May and 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 Planner, the Chief Arborist, the Senior Engineer, and the Assistant City Attorney to the board, respectively.

April 29, 2022: The representative conceded that the site does not have sufficient area to provide the residential buffer zone along the eastern portion of the site and the street buffer zone along the western portion of the site. Therefore, the representative requested a date and time to amend the Board application to include a request for a special exception to the landscape requirement. However, the deadline to provide revisions to staff was 1:00p.m. on April 27th. Since the representative missed the deadline to provide an alternate landscape plan for review and approval by staff, the representative is requested a postponement.

May 2, 2022: The Senior Engineer within the Transportation Development Services Division of the Department of Transportation recommends “no objection” the request (**Attachment B**).

July 28, 2022: The applicant provided an alternate landscape plan (**Attachment D**) for review.

July 28, 2022: The Chief Arborist within the Development Services Department reviewed the alternate landscape plan and provided staff with a recommendation of approval (**Attachment E**).

July 29, 2022: The Development Services Board specialist provided Board staff with a revised BO report reflecting the request for a special exception to the landscape requirements. Notification is required for the added request.

Minutes:

BOARD OF ADJUSTMENT ACTION: May 16, 2022

APPEARING IN FAVOR: Elizabeth Alvarez 3900 N. Hampton Dallas, TX
Anand Gupta 3900 N. Hampton Dallas,
TX Roberto Nunez 3900 N. Hampton
Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Milliken

I move that the Board of Adjustment, in Appeal No. BDA 212-012, hold this matter under advisement until August 15, 2022.

SECONDED: Agnich

AYES: 5 – Milliken, Slade, Finney, Agnich,
Sashington NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: March 21, 2022

APPEARING IN FAVOR: Elizabeth Alvarez 3900 Hampton Rd. Dallas, TX

Anand Gupta 3900 Hampton Rd. Dallas, TX

Roberto Nunez 3900 Hampton Rd. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 212-012, hold this matter under advisement until May 16, 2022.

SECONDED: Pollock

AYES: 4 – Milliken, Slade, Pollock, Agnich, Sashington

NAYS: 1 - Agnich

MOTION PASSED: 4–1

BOARD OF ADJUSTMENT ACTION: August 15, 2022

APPEARING IN FAVOR: Elizabeth Alvarez 3900 N. Hampton Dallas, TX
Anand Gupta 3900 N. Hampton Dallas, TX
Roberto Nunez 2929 Kings Rd. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION#1: Slade

I move that the Board of Adjustment, in Appeal No. BDA 212-012, on application of Elizabeth Alvarez-Villaizan, **grant** the seven-foot six-inch 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 alternate landscape plan is required

SECONDED: Agnich

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

NAYS: 0 –

MOTION PASSED (unanimously): 5-0

MOTION#2: Slade

I move that the Board of Adjustment, in Appeal No. BDA 212-012, on application of Elizabeth Alvarez-Villaizan, **grant** the four-space variance to the parking regulations requested by this applicant because our evaluation of the property and testimony shows that the physical

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

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

Compliance with the alternate landscape plan is required.

SECONDED: Pollock

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

NAYS: 0 –

MOTION PASSED (unanimously): 5-0

MOTION#3: Slade

I move that the Board of Adjustment, in Appeal No. BDA 212-012, on application of Elizabeth Alvarez-Villaizan, **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: Milliken

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

NAYS: 0 –

MOTION PASSED (unanimously): 5-0

FILE NUMBER: BDA212-055(JM)

BUILDING OFFICIAL'S REPORT: Application of Michael Edward Carroll for special exceptions to afford a handicapped person equal opportunity to use and enjoy a dwelling at 1618 Sky High Circle. This property is more fully described as Lot 42, Block B/8821 and is zoned an R-7.5(A) Single Family District, which requires a minimum front yard setback of 25 feet and unobstructed 20-foot visibility triangles from private driveways onto rights-of-way. The applicant proposes to maintain a carport for a single-family residential dwelling in a required front yard and within two 20-foot visibility triangles at the private driveway onto Sky High Circle and provide a one-foot setback from the property line. These requests require a 24-foot special exception to the front yard setback regulations and special exceptions to the visibility obstruction regulations.

LOCATION: 1618 Sky High Circle

APPLICANT: Michael Edward Carroll

REQUESTS:

The applicant proposes to maintain a carport located one-foot from the property line and approximately 11 feet from the back of the existing curb on Sky High Circle. The carport projects into the required 20-foot visibility triangle about halfway on each side due to the posts for the carport and metal sheeting on the west side of the structure.

STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED:

Section 51A-1.107(b)(1) states that the board of adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when *the board finds* that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) Single Family District
Northwest: R-7.5(A) Single Family District
Northeast: R-7.5(A) Single Family District
Southeast: CR Community Retail District
Southwest: R-10(A) Single Family District

Land Use:

The subject site and most surrounding properties are developed with single-family uses. The southeast property is developed with retail uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site within the past five years.

GENERAL FACTS/STAFF ANALYSIS

An existing house with 1,796 square feet of floor area was constructed in 2016, per DCAD. A carport addition was made without permits. The purpose of these requests is to maintain the carport within the site's required front yard and 20-foot visibility triangles from the private drive. The property is zoned an R-7.5(A) Single Family District, which requires a 25-foot front yard.

The following requests for special exceptions for the handicapped focus on maintaining carport structure to afford a handicapped person equal opportunity to use and enjoy a dwelling.

Additionally, 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 and elevations:

- The parcel contains 71 feet-of-width along Sky High Circle and 105 feet-of-depth.
- The existing single-family structure is a one-story brick house.
- The existing carport is constructed of metal and is 20-feet-wide by 24-feet-long.
- The carport projects about 10 feet into the 20-foot visibility triangles from the private driveway onto Sky High Circle.
- The carport is located approximately one-foot from the property line and 11 feet from the curb of the street/pavement line.
- The carport is eight-feet-tall and not attached to the house.
- The metal sheeting on the west side of the carport runs the length of the carport or 24 feet.

Staff conducted a site visit of the property and surrounding area and found no other properties with front yard encroachments on Sky High Circle.

Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The

term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

A copy of the “handicap” definition from this act was provided to the Board Administrator by the City Attorney’s Office. Section 3602 of this act states the following:

“(h) “Handicap” means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person’s major life activities,
2. a record of having such an impairment, or
3. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”

Therefore, the board is to consider this special exception for the handicapped request solely on whether they conclude that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

Furthermore, to protect the privacy of the handicapped individual, it’s important to note that the documentation to meet the federal standard for being handicapped has been assessed by staff and will not be shared in the public hearing unless the applicant wishes to divulge such details.

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

- The special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and
- There is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.

Additionally, the applicant has requested to obstruct the 20-foot visibility triangles. While this is a special exception to afford a handicapped person equal opportunity to use and enjoy a dwelling, typical consideration given for special exceptions to the visual obstruction regulations include whether in the opinion of the board:

- Visibility obstructions items do not constitute a traffic hazard, and
- Technical opinion is provided from the city engineer.

For this reason, the Transportation Development Services Senior Engineer has provided a technical opinion for the board’s consideration, citing no objection to the request (**Attachment A**).

As further noted on the site plan, the existing carport obstruction is:

- Up to 10 feet into the required 20-foot visibility triangle at the frontage along Sky High Circle on each side due to the posts for the carport and metal sheeting on the west side of the structure.

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

If the board were to grant the requests, typical conditions include compliance with the submitted site plan and that the special exceptions expires when a handicapped person no longer resides on the property. Additionally, due to the request for a carport located in a front yard, a suitable condition consistent with other carport special exception requests includes for the storage of items other than motor vehicles to be prohibited in a carport for which a special exception is granted in this section of the code.

TIMELINE:

- April 21, 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 C.
- 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.

August 9, 2022

The Transportation Development Services Senior Engineer provided a comment sheet citing no objection to the request (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: August 15, 2022

APPEARING IN FAVOR: Michael Carroll 1618 Sky High Cir. Dallas, TX
Sonje Carroll 1618 Sky High Cir. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION#1: Slade

I move that the Board of Adjustment, in request No. BDA 212-055, on application of Michael E. Carrol, **grant** the request to construct and maintain a carport for a single family residential dwelling in a required front yard as a special exception to the regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

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.
Applicant cannot use car port for any other purpose than off street parking.

SECONDED: Agnich

AYES: 5 – Milliken, Slade, Pollock, Agnich, Sashington
NAYS: 0 –

MOTION PASSED (unanimously): 5-0

MOTION#2: Slade

I move that the Board of Adjustment, in Appeal No. BDA 212-055, on application of Michael E. Carrol, **grant** the requested special exception to the visual obstruction regulations in the Dallas Development Code because our evaluation of the property and testimony shows that this special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

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: Sashington

AYES: 5 – Milliken, Slade, Pollock, Agnich, Sashington
NAYS: 0 –

MOTION PASSED (unanimously): 5-0

FILE NUMBER: BDA212-072(JM)

BUILDING OFFICIAL’S REPORT: Application of Ivon Ayala for a special exception to the visibility obstruction regulations at 2835 Lee Street. This property is more fully described as Part of Lot 5, Block E/1999 and is zoned a TH-3(A) Townhouse District, which requires a 45-foot visibility triangle at street intersections. The applicant proposes to construct a residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation

LOCATION: 2835 Lee Street

APPLICANT: Ivon Ayala

REQUEST:

The applicant proposes to maintain an existing wrought iron fence in a required 45-foot visibility triangle at the intersection of Lee Street and Milam Street.

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 special exception 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 objections to the request and recommends a minimum of a 30-foot visibility triangle (**Attachment A**).

BACKGROUND INFORMATION:

Zoning:

- Site: TH-3(A) (Townhouse District)
- North: TH-3(A) (Townhouse District)
- East: TH-3(A) (Townhouse District)
- South: TH-3(A) (Townhouse District) and PD No. 600
- West: TH-3(A) (Townhouse District)

Land Use:

The subject site contains a duplex use. Surrounding properties are developed with residential uses. The parcel adjacent to the south is undeveloped.

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 purpose of this request is to maintain a wrought iron fence up to four-and-one-half feet-in-height along the property line wrapping the subject site and located within the 45-foot visibility triangle at the intersection of Lee Street and Milam Street.

The subject site is zoned TH-3(A) Townhouse District which requires no front yard, a five-foot side yard and 10-foot rear yard for duplex uses; and compliance with visual obstruction regulations at intersections. The property is located on the southwest corner of Lee Street and Milam Street.

According to DCAD, the existing two-story duplex structure was constructed in 2005 with the subject northern portion containing a 2,564-square-foot main structure and a 462-square-foot attached garage. The adjoining duplex with a different owner to the south contains a 2,928-square-foot main structure and a 462-square-foot attached garage. The combined Lot 5 has a width of 50 feet along Lee Street and a length of 150 feet along Milam Street. The northern half of the lot and area of request is 50 by 82 feet.

Additionally, 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 on properties zoned single family); 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 and elevation:

- The fence follows the property line 50 feet along the Lee Street frontage before turning south and following the property line along the Milam Street frontage for over 82 feet.
- The fence is constructed of wrought iron material and open in nature.
- Once passing the front façade, the fence increases to six-feet-in-height.
- The fence obstructs the 45-foot visibility triangle at the street intersection of Lee Street and Milam Street.

The Transportation Development Services Senior Engineer has objections to the request and recommends a minimum of a 30-foot visibility triangle (**Attachment A**).

As of August 5, 2022, the applicant submitted 16 letters in support of the request. None have been received in opposition.

The applicant has the burden of proof in establishing how granting this request to maintain portions of a four-and-one-half-foot wrought iron fence in the 45-foot visibility triangle at the intersection of Lee Street and Milam Street does not constitute a traffic hazard.

Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the fence within the 45-foot visibility triangle to be constructed/maintained in the location as shown on these documents. Finally, no additional relief is provided with this request.

Timeline:

- | | |
|----------------|---|
| May 20, 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 C. |
| 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 22, 2022 The Transportation Development Services Senior Engineer provided a comment sheet recommending denial of the request (**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.

August 1, 2022 The applicant provided evidence (**Attachment B**).

August 4, 2022 The applicant provided their presentation to the board including letters of support for inclusion as evidence (**Attachment C**).

BOARD OF ADJUSTMENT ACTION: August 15, 2022

APPEARING IN FAVOR: Ivon Ayala 2833 Lee St. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: **Slade**

I move that the Board of Adjustment, in Appeal No. BDA 212-072, on application of Ivon Ayala, **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: Sashington

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

NAYS: 0 –

MOTION PASSED (unanimously): 5-0

FILE NUMBER: BDA212-076(PD)

BUILDING OFFICIAL’S REPORT: Application of Dallas County Mental Health & Mental Retardation Center represented by Rob Baldwin of Baldwin & Associates for a variance to the front yard setback regulations at 3230 Remond Drive. This property is more fully described as Lot 6, Block A/6161, LESS ROW and is zoned Planned Development District No. 1059 for MU-1 Mixed Use District uses, which requires a side yard setback of fifteen feet. The applicant proposes to construct and maintain a nonresidential structure and provide a two-foot side yard setback, which will require a 13-foot variance to the side yard setback regulations.

LOCATION: 3230 Remond Drive

APPLICANT: Dallas County Mental Health & Mental Retardation Center

REPRESENTATIVE: Rob Baldwin of Baldwin & Associates

REQUESTS:

A request for a variance to the side yard setback regulations of 13 feet is made to construct and maintain a medical office use along the south line of Remond Drive within the subject site’s fifteen-foot side yard setback on a site that is currently developed with 11 medical office use structures.

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.

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

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

(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:

- (vi) 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;
- (vii) 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;
- (viii) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (ix) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (x) 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: PDD No. 1059 for MU-1 Mixed Use District
- North: Subarea B w/in PDD No. 811, IR, SUP No. 98 for a Quarry
- South: MF-2(A) Multifamily District, Subarea A w/in PDD No. 811, IR
- East: NS(A) Neighborhood Service District, NO(A) Neighborhood Office District
- West: Subareas B and C w/in PDD No. 811, IR

Land Use:

The subject site is developed with a medical office use (MetroCare Services Hillside Campus) while surrounding properties to the west and south are undeveloped. The property to the north is developed with a hotel, restaurant, and tower antenna uses. The property to the east is developed with a tower antenna and a vacant structure.

Zoning/BDA History:

There have been one related zoning cases in the vicinity within the last five years.

1. **Z201-159:** On June 9, 2021, the City Council approved an application and ordinance for a Planned Development District for MU-1 Mixed Use District uses (PDD No. 1059) and the termination of Specific Use Permit No. 1057 for an establishment for the care of alcoholic, narcotic, and psychiatric patients on property zoned an MF-2(A) Multifamily District located on the west side of North Westmoreland Road, south of Canyon Bluff Boulevard. [*the subject site*]

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on razing the existing 11 structures and constructing and maintaining an office or medical office use consisting of two structures, one proposed five-story office building and one proposed one-story medical office use with approximately 165,000 square feet of floor area, and 496 off-street parking spaces. The site is proposed to be developed with the side yard encroachment situated along the south line of Remond Drive. The portion of the structure that encroaches along the northern façade of the proposed medical office encroaches 13 feet into the side yard setback due to a street easement existing along the street. Since the subject site contains a street easement along Remond Drive and dedication of the easement is required to the City to maintain the street and underground utilities, the required 15-foot side yard setback must be measured from the back of curb rather than the property line.

Structures on lots zoned within PDD No. 1059 for MU-1 Mixed Use District uses must have a minimum side yard setback of 15 feet. The encroachment is 13 feet into the required 15-foot side yard setback and therefore provides a two-foot side yard setback. A site plan has been submitted denoting the portion of the structure proposed to be located two feet from the back of curb along the northern façade of the structure and along the southern line of Remond Drive. Additionally, the site plan depicts two detached structures, surface, parking, an amenity area, and pedestrian amenities.

While a general MU-1 Mixed Use District does not require a side yard setback unless adjacent to or directly across an alley from a residential district, the Planned Development District does require a minimum 15 feet side yard setback and requires no minimum lot size. The subject site is irregular in shape and contains approximately 440,159 square feet in lot area. Additionally, during the zoning change, the Engineering Division determined that the site has Geologically Similar Area (GSA) along the south and western portions of site which restricts the structure from being shifted to the south or west. The development restriction exists due to the potential for escarpment zone instability or similar soil instability within these areas.

However, since staff did not receive evidence such as a comparative analysis depicting the property as being restrictive in area, shape, or slope, staff cannot determine whether the property can be developed commensurately with other properties with similar zoning.

Additionally, staff did not receive information detailing unnecessary hardship to substantiate staff support.

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

- That granting the variance to the side 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 MU-1 Mixed Use District 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 MU-1 Mixed Use District 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 side 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 7, 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 C.

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 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 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 4, 2022: The representative provided evidence (**Attachment A**) for Board consideration.

BOARD OF ADJUSTMENT ACTION: August 15, 2022

APPEARING IN FAVOR:

Rob Baldwin 3904 Elm St #B Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 212-076, on application of Dallas County Mental Health and Mental Retardation Center represented by Rob Baldwin, grant the 13-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: Pollock

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

NAYS: 0 –

MOTION PASSED (unanimously): 5-0

MOTION: Agnich

I move to adjourn the Panel C hearing.

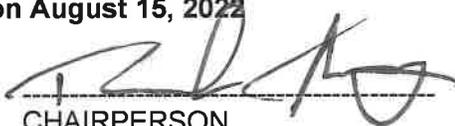
SECONDED: Sashington

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

NAYS: 0 -

MOTION PASSED (unanimously): 5 - 0

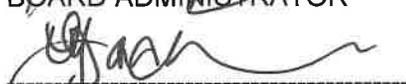
The meeting was adjourned at 2:44 P.M. on August 15, 2022



 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.