

RECEIVED

2023 APR-20 AM 9:48

**CITY SECRETARY
DALLAS, TEXAS**

BOARD OF ADJUSTMENT

Panel A Minutes

March 21, 2023



6ES Briefing Room

24923176153@dallascityhall.webex.com

David A. Neumann, Chairman

PRESENT: [5]

David A. Neumann, Chairman	
Kathleen F. Davis	
Rachel Hayden	
Lawrence Halcomb	
Jay Narey	

ABSENT: [0]

Chair Neumann called the briefing to order at **11:00 A.M.** with a quorum of the Board of Adjustment present.

Chair Neumann called the hearing to order at **1:15 P.M.** with a quorum of the Board of Adjustment present.

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

PUBLIC SPEAKERS

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

We had no speakers for public testimony during this hearing.

MISCELLANEOUS ITEMS

1- Approval of the Board of Adjustment Panel A February 21, 2023 public hearing minutes.

Motion was made to approve Panel A February 21, 2023 public hearing minutes.

Maker:	Rachel Hayden				
Second:	Jay Narey				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	-	0	

2- Two-Year Limitation Waiver – BDA201-112 – 5518 Winston Court

REQUEST: To waive the two-year limitation on a final decision reached by Board of Adjustment Panel A on November 16, 2021 - a request to construct and/or maintain an eight-foot-high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, subject to the condition of compliance with submitted site plan and elevation.

LOCATION: 5518 Winston Court

APPLICANT: Rob Baldwin

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:

The Dallas Development Code states that the board may waive the two-year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS/TIMELINE:

Two-year limitation.

(1) Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.

(2) If the board renders a final decision of denial without prejudice, the two-year limitation is waived.

(3) The applicant may apply for a waiver of the two-year limitation in the following manner:

(A) The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.

(B) The board may waive the two-year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in this section. (Ord. Nos. 19455; 20926; 22254; 22389; 22605; 25047; 27892; 28073)

BOARD OF ADJUSTMENT
 March 21, 2023

November 16, 2021: The Board of Adjustment Panel A granted a request to construct and/or maintain an eight-foot-high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, subject to the condition of compliance with submitted site plan and elevation. See Attachment A Decision Letter.

March 1, 2023: Applicant for BDA201-112 submitted a letter to Board Administrator to schedule for Board’s consideration, a request to waive the two- year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing. This letter provided an explanation as to why the applicant was making the request and provide rationale as to why this request should be granted. The two-year waiver is sought so that the Board may consider applicant’s request for a revised fence design and location on site plan. The two-year waiver request is made in order for the applicant to file a new application for a fence height special exception on the property given that the applicant proposes a fence that would no longer comply with the conditions imposed with his granted request of November 2021. See Attachment B Request to Waive Two-Year Time Limitation.

March 1, 2023: The Board Administrator emailed the applicant information regarding the miscellaneous item request with a hearing date of March 21, 2023, Panel A.

Speakers:

For: Rob Baldwin, 3904 Elm St # B, Dallas TX 75229

Against: No Speakers

Motion

I move that the Board of Adjustment, in request No. BDA 201-112, on application of Rob Baldwin, **GRANT** the request of this applicant to waive the two-year limitation on a final decision reached by Board of Adjustment Panel A on November 16, 2021 because there are changed circumstances regarding the property sufficient to warrant a new hearing.

Maker:	Jay Narey			
Second:	Rachel Hayden			
Results:	5-0 unanimously			
		Ayes:	- 5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	- 0	

CONSENT ITEMS

1. 4011 Turtle Creek Boulevard

*** This case was moved to Individual Items**

BDA223-022(OA)

BUILDING OFFICIAL'S REPORT: Application of Stephen A. Worsham for a special exception to the single-family use regulations to authorize more than one electrical utility service or more than one electrical meter at 4011 Turtle Creek Boulevard. This property is more fully described as Block 1/2062, Lot 12 and is zoned PD-193 sub area R-7.5(A), which requires that a single family dwelling use in a single family, duplex, or townhouse district may be supplied by not more than one electrical utility service and metered by not more than one electrical meter. The applicant proposes to have more than one electrical utility service, or more than one electrical meter on a lot with a single-family use, which will require a special exception to the single-family zoning use regulations.

LOCATION: 4011 Turtle Creek Boulevard

APPLICANT: Stephen A Worsham

REQUESTS:

A special exception to the single-family use regulations is requested in conjunction with installing and maintaining an additional electrical utility service and electrical meter on a site that is currently developed with a single-family use.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE MORE THAN ONE ELECTRICAL UTILITY SERVICE OR MORE THAN ONE ELECTRICAL METER:

The board may grant a special exception to authorize more than one electrical utility service or more than one electrical meter for a single-family use on a lot in a single-family zoning, duplex, or townhouse district when, in the opinion of the board, the special exception will not:

1. be contrary to the public interest;
2. adversely affect neighboring properties; and
3. be used to conduct a use not permitted in the zoning district.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize more than one electrical utility service or more than one electrical meter for a single-family use on a lot in a single-family zoning district since the basis for this type of appeal is when in the opinion of the board, the standards described above are met.

BACKGROUND INFORMATION:

Zoning:

Site: PD-193 Subdistrict R-7.5 (single-family)

North: PD-193 Subdistrict R-7.5 (single-family)

BOARD OF ADJUSTMENT
March 21, 2023

- West: PD-193 Subdistrict R-7.5 (single-family)
- South PD-193 Subdistrict R-7.5 (single-family)
- East: PD-21 Plan Development District.

Land Use:

The subject site and all surrounding areas to the north, south, and west are developed with single-family uses and the area to the east with a park.

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 installing and maintaining a second electrical utility service/electrical meter on a site currently being developed with a single family home.
- According to the application, the applicant requires a three-phase power to operate electric tools and heaters located in the garage. The applicant advised that he requires a second electric meter to provide a three-phase power.
- The site is zoned PD-193 Subdistrict R-7.5 (single-family) where the Dallas Development Code permits one dwelling unit per lot.
- The Dallas Development Code states that in a single family, duplex, or townhouse district, a lot for single family use may be supplied by not more than one electrical service, and metered by not more than one electrical meter; and that the board of adjustment may grant a special exception to authorize more than one electrical utility service or more than one electrical meter for single family use on a lot in a single family zoning district when in the opinion of the board, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties, and 3) not be used to conduct a use not permitted in the zoning district
- The applicant has submitted a site plan that indicate the proposed location of the second electrical meter on the subject site.
- As of March 10, 2023, no letters have been submitted in support of nor in opposition of the request.
- The applicant has the burden of proof in establishing that the additional electrical meter to be installed and/or maintained on the site will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties, and 3) not be used to conduct a use not permitted in the zoning
- If the board were to approve this request to install and maintain a second electrical utility service/electrical meter, this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing a second electrical utility service/electrical meter on the site (i.e., development on the site must meet all required code requirements).

Timeline:

- December 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.
- February 8, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.

BOARD OF ADJUSTMENT
 March 21, 2023

February 13, 2023: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 27, 2023, deadline to submit additional evidence for staff to factor into their analysis; and March 10, 2023, deadline to submit additional evidence to be incorporated into the board's docket materials.
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 28, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorneys to the Board, and the Senior Planners.

Speakers:

For: Stephen Worsham, 4011 Turtle Creek Blvd, Dallas TX 75219

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-022, on application of Stephen Worsham, **GRANT** the request to install and maintain an additional electric meter on the property as a special exception to the single family regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not be contrary to the public interest, will not adversely affect neighboring property, and will not be used to conduct a use not permitted in the district where the building site is located.

BDA 223-022— Application of Stephen A. Worsham for a special exception to the single-family use regulations to authorize more than one electrical utility service or more than one electrical meter in the Dallas Development Code.

Maker:	Rachel Hayden				
Second:	Kathleen Davis				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	-	0	

2. 5506 Columbia Avenue

***This case was moved to Individual Items**

BDA223-024(OA)

BUILDING OFFICIAL'S REPORT: Application of Kellisha Goodwin for a special exception to the fence standards regulations at 5506 Columbia Avenue. This property is more fully described as Block H/0694, Lot 2 and is zoned D(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 6-foot high fence in a required front yard, which will require a 2-foot special exception to the fence standards regulations.

LOCATION: 5506 Columbia Avenue

APPLICANT: Kellisha Goodwin

REQUEST:

A request a special exception to the fence standards regulations of 2' is made to maintain a 6' high solid wood fence and an existing 6' high automatic iron gate in the required front yard on a site developed with a duplex.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS:

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: D(A) (duplex district)
North: MF-2(A) (multi-family district)
East: P (A) (parking district)
South: D(A) (duplex district)
West: D(A) (duplex district) and PD No 349 PD District.

Land Use:

The subject site is being developed with duplex. The areas to the north is developed with multi-family uses, the areas to the south and west are developed with single family uses and the area to the east is developed with parking and commercial 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:

BOARD OF ADJUSTMENT
March 21, 2023

- The request for a special exception to the fence height standards regulations of 2' focuses on maintaining a 6' high solid wood fence and an existing 6' high automatic iron gate in the required front yard on a site developed with a duplex.
- 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 subject site is zoned D(A) Duplex District where a 25-foot front yard setback is required.
- The submitted site plan/elevation denotes that the existing fence is located in the required front yard. The following additional information was gleaned from the this document:
 - The proposed fence is approximately 59 feet in length parallel to Columbia Avenue and is located about 14' 6" from the front property line.
 - The distance between the proposed fence and the pavement line is 21'.
- Staff 6' conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and noticed other fences that appear to be above four feet in height and located within a front yard setback.
- As of March 10, 2023, no letters have been submitted in support of nor in opposition of the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulation of two feet will not adversely affect the neighboring property.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding four feet in the front yard setback to be constructed in the location and heights as shown on this document.

Timeline:

- January 9, 2023: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- February 8, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- February 13, 2023: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
 - an attachment that provided the public hearing date and panel that will consider the application; the February 27, 2023, deadline to submit additional evidence for staff to factor into their analysis; and March 10, 2023, deadline to submit additional evidence to be incorporated into the board's docket materials.
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

BOARD OF ADJUSTMENT
 March 21, 2023

February 28, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorneys to the Board, and the Senior Planners.

Speakers:

For: Kellisha Goodwin, 160 Pioneer Ct, Royse city, TX 75189

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-024, on application of Kellisha Goodwin, **GRANT** the request of this applicant to construct and/or maintain a six-foot-high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

BDA 223-024— Application of Kellisha Goodwin for a special exception to the fence standards regulations in the Dallas Development Code, is subject to the following conditions:

Compliance with the submitted site plan/elevation is required

Maker:	Lawrence Halcomb			
Second:	Jay Narey			
Results:	5-0 unanimously			
	Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
	Against:	-	0	

3. 13418 Hughes Lane

***This case was moved to Individual Items**

BDA223-025(OA)

BUILDING OFFICIAL’S REPORT: Application of Jennifer Hiromoto for special exceptions to the fence standards regulations at 13418 Hughes Lane. This property is more fully described as A/7439, Lot 3 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet, and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and/or maintain a 6 foot 6 inch high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence standards regulations, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations.

LOCATION: 13418 Hughes Lane

APPLICANT: Jennifer Hiromoto

REQUESTS:

The following requests have been made on a site that is being developed with a single-family home:

1. A request for a special exception to the fence standards regulations of 2' 6" is made to construct and maintain a 6' 6" high wall with stone finish, a drive gate with 2" metal frame and welded wire mech panels with 6' tall stone finish post with Limestone caps, and a 6' tall 2X4 12.5 gauge welded wire mech panels on top of a low wall with stone finish with a 6' tall stone finish wall with a pedestrian gate.
2. A request for a special exception to the fence standards regulations related to fence panels with a surface area that is less than 50 percent open and less than five feet from the front lot line is made to construct and maintain a 6' 6" high wall with stone finish and a 6' tall stone finish wall with a pedestrian gate located less than five feet from the front lot line.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS (fence standards regulations):

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 the 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-1ac(A) (Single Family District)
- North: R-1ac(A) (Single Family District)
- East: R-1ac(A) (Single Family District)
- South: R-1ac(A) (Single Family District)
- West: R-1ac(A) (Single Family District)

Land Use:

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

Zoning/BDA History:

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

1. **BDA212-111:** On January 17, 2023, Panel C granted requests to construct and/or maintain a six-foot nine-inch-high fence as a special exception to the height requirement for fences; to construct and/or maintain a fence with panel having less than 50 percent open surface area as a special exception to the surface area openness requirement for fences; and to maintain items in the 20-foot visibility triangle at the drive approach on Alpha Road as a special exception to

the visual obstruction regulations in the Dallas Development Code subject to compliance with the submitted revised site plan / elevation.

2. **BDA212-112:** On January 17, 2023, Panel C granted requests to construct and/or maintain a six-foot nine-inch-high fence as a special exception to the height requirement for fences; to maintain items in the 20-foot visibility triangle at the drive approach on Alpha Road as a special exception to the visual obstruction regulations; and to construct and/or maintain a fence with panel having less than 50 percent open surface area located less than five feet from the front lot line as a special exception to the surface area openness requirement for fences in the Dallas Development Code subject to compliance with the submitted revised site plan / elevation.

GENERAL FACTS/STAFF ANALYSIS:

- The following requests are made on a site being developed with a single-family home:
 1. A request for a special exception to the fence standards regulations of 2' 6" is made to construct and maintain a 6' 6" high wall with stone finish, a drive gate with 2" metal frame and welded wire mech panels, with 6' tall stone finish post with Limestone caps, and a 6' tall 2X4 12.5 gauge welded wire mech panels on top of a low wall with stone finish with a 6' tall stone finish wall with a pedestrian gate.
 2. A request for a special exception to the fence standards regulations related to fence panels with a surface area that is less than 50 percent open and less than five feet from the front lot line is made to construct and maintain a 6' 6" high wall with stone finish and a 6' tall stone finish wall with a pedestrian gate located less than five feet from the front lot line,
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard. The subject site is zoned an R-16(A) Single Family District which requires a 35-foot front yard setback. However, this site has a recorded 40' required front yard along Hughes Lane per plat.
- Section 51A-4.602(a) (2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- Additionally, the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five from the front lot line.
- The following information is denoted on the submitted site plan:
 - The fence is represented as being approximately 135' in length fronting Hughes Lane.
 - The fence is located between the property line and 19' into the property line along the street.
 - The fence extends 40' perpendicular to Hughes Lane on the east and west side of the site.
 - The fence is proposed to be located between 12' and 32' from the pavement line.
- Staff conducted a field visit of the site and surrounding area, approximately 1000 feet around the subject site, and noticed several other fences that appear to be above four feet in height and located in a front yard setback.
- As of March 10, 2022, 10 letters have been submitted in support and no letters in opposition to this request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations will not adversely affect neighboring property.

BOARD OF ADJUSTMENT
March 21, 2023

- If the Board were to grant these special exceptions request and impose a condition that the applicant complies with the submitted site plan and elevation, the proposal over 4’ in height in the front yard setback and less than 50 percent open and less than five feet from the front lot line be limited to that what is shown on these documents.

Timeline:

- January 13, 2023: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 8, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- February 13, 2023: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
 - an attachment that provided the public hearing date and panel that will consider the application; the February 27, 2023, deadline to submit additional evidence for staff to factor into their analysis; and March 10, 2023, deadline to submit additional evidence to be incorporated into the board’s docket materials.
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- February 25, 2023: The applicant provided additional evidence (**Attachment A**).
- February 28, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorneys to the Board, and the Senior Planners.

Speakers:

- For: Jennifer Hirimoto 10233 E. NW Hwy # 38586, Dallas TX
Lyn Pustmueller 13418 Hughes Ln, Dallas TX 75240
Joel Pustmueller 13418 Hughes Ln, Dallas TX 75240 – did not speak
Jim Graham 13428 Hughes Ln, Dallas TX 75240 – did not speak
- Against: Abraham Toobian 13408 Hughes Ln, Dallas TX 75240
Mitchell Terry 1500 Romsgate, Plano TX 75093

Motion #1

I move that the Board of Adjustment, in Appeal No. BDA 223-025, on application of Jennifer Hirimoto, **GRANT** the request of this applicant to construct and/or maintain a six-foot, six-inch high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

BDA 223-025— Application of Jennifer Hiromoto for special exceptions to the fence standards regulations in the Dallas Development Code, subject to the following condition(s):

Compliance with the submitted site plan and elevation is required.

Maker:	Lawrence Halcomb				
Second:	Jay Narey				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	-	0	

Motion #2

I move that the Board of Adjustment, in Appeal No. BDA 223-025, on application of Jennifer Hiromoto, **GRANT** the request of this applicant to construct and/or maintain a fence with panels having less than 50 percent open surface area located less than five feet from the front lot line as a special exception to the surface area openness requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

BDA 223-025— Application of Jennifer Hiromoto for special exceptions to the fence standards regulations in the Dallas Development Code, subject to the following condition(s):

Compliance with the submitted site plan and elevation is required.

Maker:	Lawrence Halcomb				
Second:	Jay Narey				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey, and Lawrence Halcomb
		Against:	-	0	

4.1300 W. Mockingbird Lane

***This case was moved to Individual Items**
 BDA223-028(GB)

BUILDING OFFICIAL’S REPORT: Application of Hunt Companies, Inc., represented by Rodney Moss, for a special exception to the off-street parking regulations at 1300 W. Mockingbird Lane. This property is more fully described as Lot 1, Block P/7940, and is zoned MU-3, which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for office, medical laboratory and communication exchange facility uses, and provide 454 of the required 547 parking spaces, which will require a 93 space special exception to the off-street parking regulations.

LOCATION: 1300 W Mockingbird Lane

APPLICANT: Hunt Companies, Inc., represented by Rodney Moss

REQUEST:

- A request for a special exception to the off-street parking regulations of 93 spaces is made to transition certain uses within an existing approximately 230,000 square feet, five-story structure to other uses, some of which require more off-street parking than what is currently required. In this particular case, the proposal is to reallocate certain uses in the existing structure (most of which are office use) to a combination of office, medical laboratory, and communication exchange facility uses, and provide 454 (or 83 percent) of the required 547 off-street parking spaces on the subject site.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending

BOARD OF ADJUSTMENT
March 21, 2023

regulations governing a specific planned development district. This prohibition does not apply when:

- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
- (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception to the off-street parking regulations of 93 spaces shall automatically and immediately terminate if the “medical laboratory”, “office”, “communication exchange facility” uses are changed or discontinued.

Rationale:

- The Senior Engineer indicated that he has no objections to the request.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed-Use; High density retail, office, hotel and/or multifamily residential uses in combination on single or contiguous building sites)

North: MU-3 (Mixed-Use; High density retail, office, hotel and/or multifamily residential uses in combination on single or contiguous building sites)

South: MU-3 (Mixed-Use; High density retail, office, hotel and/or multifamily residential uses in combination on single or contiguous building sites)

East: MU-3 (Mixed-Use; High density retail, office, hotel and/or multifamily residential uses in combination on single or contiguous building sites)

West: MU-3 (Mixed-Use; High density retail, office, hotel and/or multifamily residential uses in combination on single or contiguous building sites)

Land Use:

There is an existing office building located on the site. The areas to the north, south, east, and west are developed with mixed-uses.

Zoning/BDA History:

There has not been any BDA History in the past five years.

GENERAL FACTS /STAFF ANALYSIS:

- A request for a special exception to the off-street parking regulations of 93 parking spaces (17% reduction) focuses reallocating certain uses in the existing structure (most of which are office

BOARD OF ADJUSTMENT
March 21, 2023

- use) to a combination of office, medical laboratory, and communication exchange facility uses, and provide 454 (or 83 percent) of the required 547 off-street parking spaces on the subject site.
- The Dallas Development Code requires the following off-street parking requirements:
 - Office: one space per 333 square feet of floor area
 - Medical Office: one space per 200 square feet of floor area.
 - Communication exchange facility: one space per 5,00 square feet of floor area
- The applicant has submitted a document that provides information regarding the total square footage of the existing structure on the site with a list of the uses (and square footage of each use) that is proposed.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the office, medical laboratory, and communication exchange facility uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 93 spaces (or a 17 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose condition recommended by staff, the applicant could lease and maintain the existing structure with the uses described above and provide only 454 (or 83 percent) of the 547 required off-street parking spaces on the subject site.

Timeline:

January 20, 2023: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 08, 2023: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 16, 2023: 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 February 27th deadline to submit additional evidence for staff to factor into their analysis; and the March 10th 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.”

February 28, 2023: 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 Board of Adjustment Senior Planners (Oscar Aguilera and Giahanna Bridges), the Board of Adjustment Development Code Specialist, the Board of Adjustment Consultant, Development Services Senior Engineers, and the Board Attorney.

❖ Comments (February 16, 2023): The Development Services Engineering Department (David Nevarez) suggested for the applicant to submit a traffic study/analysis to justify the request for a 17% parking reduction.

BOARD OF ADJUSTMENT
 March 21, 2023

March 06, 2023: Received comments from engineering: “No objections based on technical review of parking needs, empirical data, and anticipated shared parking demand” “Has no objections”

Speakers:

For: Rodney Moss 2626 Cole Ave # 510, Dallas TX 75701
 Peter Jansen 2100 McKinney Avenue, Dallas TX
 Phillip Huang 2377 N. Stemmons Fwy, Dallas TX 75207

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-028, on application of Hunt Companies, Inc. represented by Rodney Moss, **GRANT** the request of this applicant to provide 454 off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code, as amended, which requires 547 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for a combination of office, medical laboratory, and communication exchange facility.

BDA 223-028— Application of Hunt Companies, Inc. represented by Rodney Moss in the Dallas Development Code, to provide 454 off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code, as amended subject to the following condition(s):

The special exception of 93 spaces shall automatically and immediately terminate if and when the combination of office, medical laboratory, and communication exchange facility is change or discontinued.

Maker:	Kathleen Davis				
Second:	Rachel Hayden				
Results:	5-0				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey and Lawrence Halcomb
		Against:	-	0	

Individual Cases

5.5608 Live Oak Street
 BDA223-027(OA)

BUILDING OFFICIAL’S REPORT: Application of Kevin Alaimo for a variance to the height regulations at 5608 Live Oak Street. This property is more fully described as Block 16/1872, Lot 25 and is zoned MF-2(A), which limits the building height to 26 feet due to a residential proximity slope. The applicant proposes to construct and/or maintain structure with a building height of 35 feet 9 inches, which will require a 9 foot 9 inch variance to the height regulations.

LOCATION: 5608 Live Oak Street

APPLICANT: Kevin Alaimo

REQUEST:

A request for a variance to the height regulations (specifically to the residential proximity slope) of 9' 9" is made to transition an existing structure from what was originally planned to be a 3-unit, 2-3-story, multifamily structure to a 2-3-story single family structure. More specifically, the proposal is to complete/modify and maintain the structure to 35' 9" in height which exceeds the maximum 26' in height permitted by the residential proximity slope that begins at the PD 63 H/1 Area B single family residentially-zoned property immediately southeast of the subject site.

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

State Law/HB 1475 effective 9-1-21

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded the variance should be granted given that the subject site is unique and different from most lots in MF-2(A) considering its restrictive lot area of 7,100 square feet so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning classification. Furthermore, the financial cost of compliance is greater than 50 percent of the appraised value of \$545,010 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.
- The applicant submitted a document (Attachment A) indicating that the proposed structure on the site is commensurate to 14 other lots located in the same zoning district.

BACKGROUND INFORMATION:

Zoning:

- Site: MF-2(A) (Multifamily district)
- North: MF-2(A) (Multifamily district)
- South: MF-2(A) (Multifamily district)
- East: PD 63 H/1 Area B (Planned Development district)
- West: MF-2(A) (Multifamily district)

Land Use:

The subject site is currently developed with an unfinished multifamily structure/use. The areas to the north, south, and west are developed with single family uses; and the area to the east is developed with single family uses.

Zoning/BDA History:

1. BDA156-040, Property at 5608 Live Oak Street (the subject site)

On April 17, 2017, the Board of Adjustment Panel C approved the requests for variances to the side yard setback, building height, and off-street parking regulations without prejudice. The case report stated the a variance to the side yard setback regulations of 2' was made to complete and maintain part of the structure that is located 8' from the site's southwest side property line or 2' into the site's 10' side yard setback*; a variance to the height regulations (specifically to the residential proximity slope) of 8' was made to complete/modify and maintain the 34" high structure that exceeded the maximum 26' in height permitted by the residential proximity slope that begins at the PD 63 H/1 Area B single family

residentially-zoned property immediately southeast of the subject site; a variance to the off-street parking regulations was made to locate and maintain required and/or excess parking for the multifamily use/structure in the required front yard.

2. BDA156-040, Property at 5608 Live Oak Street (the subject site)

On April 20, 2016, the Board of Adjustment Panel C denied requests for variances to the side yard setback, building height, and off-street parking regulations without prejudice.

The case report stated the a variance to the side yard setback regulations of 2' was made to complete and maintain part of the structure that is located 8' from the site's southwest side property line or 2' into the site's 10' side yard setback*; a variance to the height regulations (specifically to the residential proximity slope) of 9' 2" was made to complete/modify and maintain the 35' 2" high structure that exceeded the maximum 26' in height permitted by the residential proximity slope that begins at the PD 63 H/1 Area B single family residentially-zoned property immediately southeast of the subject site; a variance to the off-street parking regulations was made to locate and maintain required and/or excess parking for the multifamily use/structure in the required front yard.

GENERAL FACTS /STAFF ANALYSIS (height variance):

- The request for a variance to the height regulations (specifically to the residential proximity slope) of 9' 9" is requested to complete/modify and maintain the structure to 35' 9" in height. This height exceeds the maximum 26' in height permitted by the residential proximity slope that begins at the PD 63 H/1 Area B single family residentially zoned property immediately southeast of the subject site by 9' 9".
- The maximum height for a structure in a MF-2(A) zoning district is 36', however, any portion of a structure over 26' in height cannot be located above a residential proximity slope.
- In this case, given that the subject site is immediately adjacent to single family residentially-zoned property PD 63 H/1 Area B (Planned Development district) to the southeast (with a land use as a single family uses), the height of a structure must comply with a 1:3-slope (or 1 foot in height for every 3 foot away from property in an R, R(A), D, D(A), TH, TH(A) residential zoning district). The RPS slope on the subject site begins at the PD 63 H/1 Area B (Planned Development district) zoned property southeast of the site. (PD 63 Area B states that uses are limited to single-family uses, and that except at otherwise provided in the ordinance, the development standards applicable to an R-7.5(A) Single-Family District apply to all property in Area B).
- The Building Official's Report states that a variance to the height regulations of 9' 9" is requested since there is a structure proposed to reach 35' 9" in height or 9' 9" higher/beyond than the 26' height allowed for the structure as it is located on this subject site.

BOARD OF ADJUSTMENT
March 21, 2023

- The applicant has submitted an elevation that represents a 1:3-slope (or 1 foot in height for every 3 foot away from property in a CH, MF-1, MF-1(A), MF-2, and MF-2(A) residential zoning district) on the structure seeking variance.
- According to DCAD records, the “main improvement” at 5608 Live Oak Street is a structure built in 2015 with 5,595 square feet of living/total area; and with “additional improvements” listed as three, 2 square foot decks, and three, 322 square foot attached garages.
- The site is flat, rectangular in shape (130’ x 56’), and according to the application is 7, 280 square feet in area smaller than the adjacent.
- The applicant has submitted a document comparing the lot sizes and improvement of the subject site with 14 other properties in the same zoning. The average lot is 9,156 square feet with an average 8,983 square foot building.
- Furthermore, applicant submitted a document representing that the financial cost of compliance is greater than 50 percent of the appraised value of \$545,010 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 on the site that is commensurate to 14 other lots located within the same MF-2(A) zoning district.
 - The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height 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 to height regulations 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 MF-2(A) zoning classification.
 - The variance to height setback regulations 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 MF-2(A) zoning classification.
- If the Board were to grant the request, and impose the submitted elevation as a condition, the structure in the exceeding the height limit or the RPS would be limited to what is shown on this document– which, in this case, is a structure that would be exceed the height limit/RPS by 9’ 9”.

Timeline:

- January 19, 2023: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 8, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- February 13, 2023: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 27, 2023, deadline to submit additional evidence for staff to factor into their analysis; and March 10, 2023, deadline to submit additional evidence to be incorporated into the board’s docket materials.
 - the criteria/standard that the board will use in their decision to approve or deny the request; and

BOARD OF ADJUSTMENT
 March 21, 2023

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

February 28, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorneys to the Board, and the Senior Planners.

February 28, 2023: The applicant provided additional evidence.

Speakers:

For: Kevin Alaimo 1203 Silentbrook Ct, Frisco TX 75236
 Gary Lawler 5620 Live Oak # 202, Dallas TX 75206

Against: Larry Offutt 6039 Bryan Pkwy, Dallas TX 75206
 Bill Heathcott 5507 Bryan St, Dallas TX 75206

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-027, on application of Kevin Alaimo, **DENY** the variance to the height regulations requested by this applicant without prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

Maker:	David Neumann				
Second:	Kathleen Davis				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Kathleen Davis, Rachel Hayden, Jay Narey and Lawrence Halcomb
		Against:	-	0	

ADJOURNMENT

After all business of the Board of Adjustment had been considered, Chair Neumann moved to adjourn the meeting; motion by Rachel Hayden, seconded by Jay Narey at 4:26 p.m.

Recess: 3:12 p.m.; Resume: 3:17 p.m.


 Required Signature:

Mary Williams, Board Secretary
 Development Services Dept.


 Date

BOARD OF ADJUSTMENT
March 21, 2023



Required Signature:

Nikki Dunn, Chief Planner/Board Administrator
Development Services Dept.



Date



Required Signature:

David A. Neumann, Chairman
Board of Adjustment



Date