



BOARD OF ADJUSTMENT

Panel A Minutes

April 18, 2023

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CITY SECRETARY
DALLAS, TEXAS

6EN Council Chambers

24923176153@dallascityhall.webex.com

David A. Neumann, Chairman

PRESENT: [5]

David A. Neumann, Chairman	
Rachel Hayden	
Lawrence Halcomb	
Jay Narey	
Philip Sahuc	

ABSENT: [0]

Kathleen Davis	

Chair Neumann called the briefing to order at **10:28 A.M.** with a quorum of the Board of Adjustment present.

Chair Neumann called the hearing to order at **1:00 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 March 21, 2023 public hearing minutes.

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

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

CONSENT ITEMS

1. **8915 Douglas Avenue**
 BDA223-029(GB)

***This Case was moved to Individual Items**

BUILDING OFFICIAL’S REPORT: Application of Jennifer Hiromoto for a special exception to the fence height regulations, and for a special exception to the fence regulations at 8901 and 8915 Douglas Ave. This property is more fully described as Block 8/5598, Lot 1A and is zoned R-1 ac (A) which limits the height of the fence in the front yard to 4 feet; and requires that a fence panel with a surface area that is less than 50 percent open not be located less than 5 feet from the front lot line. The applicant proposes to construct a 6-foot3-inch-high fence in a required front yard, which will require a 2-foot 3-inch special exception to the fence regulations, and to construct a fence in a required front yard with a fence panel having less than 50 percent open surface located less than 5 feet from the lot line, which will require a special exception to the fence regulations.

LOCATION: 8915 Douglas

APPLICANT: Jennifer Hiromoto

REQUESTS:

A request for a 2-foot 3-inch special exception to the fence regulations, and to construct a fence in a required front yard with a fence panel having less than 50 percent open surface located less than 5 feet from the lot line, which will require a special exception to the fence regulations.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site and areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded for this address or in the immediate vicinity of the subject site.

GENERAL FACTS/STAFF ANALYSIS:

A request for a 2-foot 3-inch special exception to the fence regulations, and to construct a fence in a required front yard with a fence panel having less than 50 percent open surface located less than 5 feet from the lot line, which will require a special exception to the fence regulations.

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 and states that no fence panel having less than 50 percent open surface area may be located less than five feet from the front lot line.

The subject site is zoned an R-1 ac (A) Single Family District where a 40-foot front yard setback is required.

The applicant has submitted a site plan and elevation of the proposal. The site plan and elevation represent a fence that is over 4' in height in the required front yard.

- The following additional information was gleaned from the submitted site plan:
 - The proposed fence will be 5 feet from the property line and conform to Visibility Triangle Guidelines.
 - Most of the proposed fence will be an open style wrought iron fence with masonry columns.
- The Board of Adjustment Senior Planner conducted a field visit to determine if the fence would adversely affect neighboring properties.
- As of April 03, 2023, no letters have been received in opposition or support of this request.

The applicant has the burden of proof in establishing that the special exception to the fence height regulation of four feet will not adversely affect neighboring property.

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Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding four-foot-in-height in the front yard setback to be constructed in the location and heights as shown on these documents.

Timeline:

- February 07, 2023: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.
- March 06, 2023: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- March 14, 2023: The Board Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application.
 - an attachment that provided the public hearing date and panel that will consider the application; the April 19, 2023, deadline to submit additional evidence for staff to factor into their analysis; and the March 28, 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."
- March 30, 2023: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.

Speakers:

For: Jennifer Hiromoto, 10233 E. NW Hwy # 38586, Dallas TX

Against: No Speakers

Motion # 1

I move that the Board of Adjustment, in Appeal No. BDA 223-029, on application of Jennifer Hiromoto, **GRANT** the request of this applicant to construct and/or maintain a 6-foot 3-inch high fence as a special exceptions to the height requirements 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.

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

Compliance with the submitted site plan and elevation is required.

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

Motion # 2

I move that the Board of Adjustment, in Appeal No. BDA 223-029, on application of Jennifer Hiramoto, **GRANT** the request of this applicant to construct and/or maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as a special exception to the surface area openness requirement for fences in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

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

2. 1020 McBroom Street

***This case was moved to Individual Items**
 BDA223-035(ND)

BUILDING OFFICIAL'S REPORT: Application of Brent Jackson for a variance to the side yard setback regulations at 1020 McBroom Street. This property is more fully described as Block A/7104, Lot 1, and is zoned R-5(A), which requires a side yard setback of 5 feet. The applicant proposes to maintain a single-family residential structure and provide a 0-side yard setback, which will require a 5-foot variance to the side yard setback regulations.

LOCATION: 1020 McBroom Street
APPLICANT: Brent Jackson

REQUEST:

A request for a variance to the side yard setback regulations of 0 feet is made to maintain a single-family home. The applicant is proposing to maintain a single-family residential structure and provide a 0-foot side yard setback, which will require a 5-foot variance to the side yard setback regulations.

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 considers the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that granting the variance in this application would not be contrary to public interest in that the variance would allow a structure in one of the site's two side yard setbacks where the location of this structure would comply with the required 5 foot side yard setback if Winnetka on this corner lot did not have a street easement.
- Staff concluded that the subject site is unique and different from most lots in R-5(A) zoning district in that it is restrictive in area due to having a street easement in the side yard setback on Winnetka.

- **ZONING/BDA HISTORY:**

There has not been any recent related board or zoning cases recorded for this address or in the immediate vicinity of the subject site.

Zoning:

<u>Site:</u>	R-5(A)
<u>North:</u>	R-5(A)
<u>South:</u>	R-5(A)
<u>East:</u>	R-5(A)
<u>West:</u>	R-5(A)

Land Use:

The subject site is developed with a single family home. The areas to the north, south, east, and west are developed with single-family uses.

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the side yard setback regulations of 0 feet is made to maintain a single-family home.
- On December 13, 2021, Oaxaca Construction LLC applied for a new construction permit for a single-family residential structure. The permit was issued on February 10, 2022.
- The single-family home as constructed lies within the 5-foot required side yard setback.
- It appears that the home was not built-in compliance to the submitted site plans as the home appears to be also encroaching into the ROW to the west of the property. (Lloyd stated that the home is encroaching into the ROW- was determined during his site visit.)
 - This site is a request request for a variance to the side yard setback regulations of 0 feet is made to maintain a single-family home. The applicant is proposing to maintain a single-family residential structure and provide a 0-foot side yard setback, which will require a 5-foot variance to the side yard setback regulations.
 - The site has a 5 foot street easement of which serves to be the line of which the setback is measured versus the property line.
 - If this site's side yard did not have a street easement side yard setbacks would be compliant on this site.
- The applicant has the burden of proof in establishing the following:

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- That permitting such a variance of the front yard where the literal enforcement of the provision of this article would result in an unnecessary hardship and where such variance is necessary to permit a specific parcel of land which differs from other parcels of land in the same PD 98 district by being of such restricted area, shape, or slopes that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same PD 98 district.
- A modification of standards established by this article may not be granted to relieve a self-created or personal hardship, not for financial reason only, nor may such modification be granted to permit any person a privilege in developing a parcel of land not permitted by this article to other parcels of land in this district.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document– which in this case is a home structure that would be located 0 feet from the site’s side yard easement line (N. Winnetka) or 5 feet into this property’s easement set line.

Timeline:

February 15, 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.

March 06, 2023: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

March 23, 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 January 23rd deadline to submit additional evidence for staff to factor into their analysis; and the February 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.”

March 30, 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 Planner, the Board of Adjustment Development Code Specialist, the Board of Adjustment Consultant, the Chief Arborist, Development Services Senior Engineers, and the Board Attorney.

Speakers:

For: Sam Mallik, 2323 Victory Ave, Suite 700, Dallas TX 75219

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-035, on application by Brent Jackson, **DENY** the variance to the side yard setback 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:	Phil Sahuc				
Results:	5-0 unanimously				
		Ayes:	-	5	David A. Neumann, Rachel Hayden, Jay Narey, Lawrence Halcomb and Phil Sahuc
		Against:	-	0	

INDIVIDUAL CASES

3. 4178 Saranac
 BDA223-037(ND)

BUILDING OFFICIAL’S REPORT: Application of Aneesh Kumar, represented by Nick George for a special exception to the fence standards regulations and a special exception to the visual obstruction regulations at 4178 Saranac Drive This property is more fully described as Block 11/6147, Lot 17 and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet and requires 20-foot visibility triangles at driveways. 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 locate and maintain items in 20-foot visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 4178 Saranac Drive

APPLICANT: Aneesh Kumar
 Represented by Nick George

REQUESTS:

The following requests have been made on a property developed with a single-family home:

1. A special exception to the fence regulations is made to construct a 6’ 6” high single family residential fence structure in the required front yard; and
2. Special exception to the visual obstruction regulations to locate and maintain portions of a 6’ 6” high single family residential fence with four 20’ visibility triangles.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION (fence standards regulations):

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (visual obstruction regulations):

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

Traffic Engineer reviewed the request and cites no traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single Family District)
North: R-10(A) (Single Family District)
East: R-10(A) (Single Family District)
South: R-10(A) (Single Family District)
West: R-10 (A) and 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 is no BDA History within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

- The following requests have been made on a property developed with a single-family home:
 1. A special exception to the fence regulations is made to construct a 6' 6" high single family residential fence structure in the required front yard; and
 2. Special exception to the visual obstruction regulations to construct and maintain portions of a 6' 6" high single family residential fence with two 20' visibility triangles.
- 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 R-10(A) Single Family District which requires a thirty-foot front yard setback.
- The submitted site plan shows the following information:
 - The proposed fence is located at the lot line along Saranac Drive.

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- 6' 6" high single family residential fence with four 20' visibility triangles.
 - Staff conducted a field visit of the site and surrounding area.
 - As of April 6, 2023, letters of opposition have been submitted
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations will not adversely affect neighboring property.

Section 51A-4.602(d) of the Dallas Development Code states the following: 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).

As further noted on the site plan, the proposed fence would obstruct:

- Portions of the 6' 6" fence are proposed to be located within the four 20' visibility triangles at the driveway approach. The Development Services Senior Engineer has no objections to the request for the obstructions to visibility triangle encroachment.

The requests for special exceptions to the visual obstruction regulations, the applicant has the burden of proof to establish how granting these requests to maintain the fence and gates in 20-foot visibility triangles on either side of the driveway does not constitute a traffic hazard.

Granting these requests for special exceptions to the fence standards and visual obstruction regulations with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the fence and gate over 4' in height in the front yard setback, and items in the four 20' visibility triangles at the driveway into the site as shown on these documents.

Timeline:

- February 16, 2023: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.
- March 6, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel A.
- March 23, 2023: Development Services 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 March 29, 2023, deadline to submit additional evidence for staff to factor into their analysis; and March 29, 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.

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March 29, 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 Development Services Chief Planner, the Assistant City Attorney to the Board, Code Compliance Director, and the Senior Planner.

Speakers:

For: Aneesh Kumar, 4178 Saranac Dr, Dallas TX 75220
 Nick George,

Against: Steve Leary, 4186 Saranac Dr, Dallas TX 75220
 Matt Frye, 4182 Saranac Dr, Dallas TX 75220

Motion #1

I move that the Board of Adjustment, in Appeal No. BDA 223-037, on application of Aneesh Kumar, represented by Nick George, **DENY** the special exception requested by this applicant to construct and/or maintain a 6-foot 6-inch high fence **with** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

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

Motion #2

Motion to withdraw. Subsequent motion was made.

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

Motion #3

I move that the Board of Adjustment, in Appeal No. BDA 223-037, Application of Aneesh Kumar, represented by Nick George, **DENY** the special exception requested by this applicant to construct and/or maintain items in the visibility triangle at the driveway approaches **with** prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

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

Motion #4

I move that the Board of Adjustment, in Appeal No. BDA 223-037, on application of Aneesh Kumar, represented by Nick George, **DENY** the special exception requested by this applicant to construct and/or maintain a 6-foot 6-inch high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

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

ADJOURNMENT

After all business of the Board of Adjustment had been considered, Chair Neumann moved to adjourn the meeting at 2:20 p.m.

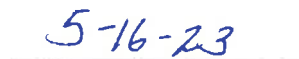

Required Signature:

Mary Williams, Board Secretary
Development Services Dept.


Date


Required Signature:

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


Date

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David A. Neumann

Required Signature:
David A. Neumann, Chairman
Board of Adjustment

5/16/23
Date