

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL COUNCIL CHAMBERS
WEDNESDAY, February 19, 2020**

MEMBERS PRESENT AT BRIEFING: Michael Schwartz, chair, Scott Housel, regular member, Matthew Vermillion, regular member, Damian Williams, regular member and Catrina Johnson, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Michael Schwartz, chair, Scott Housel, regular member, Matthew Vermillion, regular member, Damian Williams, regular member and Catrina Johnson, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Sarah May, Interim Chief Planner/Board Administrator, Jennifer Munoz, Chief Planner, Theresa Pham, Asst. City Attorney, David Nevarez, Engineering Division, Elaine Hill, Acting Board Secretary, LaTonia Jackson, Board Secretary, Neva Dean, Assistant Director

STAFF PRESENT AT HEARING: Sarah May, Interim Chief Planner/Board Administrator, Jennifer Munoz, Chief Planner, Theresa Pham, Asst. City Attorney, David Nevarez, Engineering Division, Elaine Hill, Acting Board Secretary, LaTonia Jackson, Board Secretary, Neva Dean, Assistant Director

11:06 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 19, 2020 docket.**

BOARD OF ADJUSTMENT ACTION: February 19, 2020

1:09 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 B, February 19, 2020 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: February 19, 2020

MOTION: Hounsel

Approval of the Board of Adjustment Panel B, February 19, 2020 public hearing minutes.

SECONDED: Vermillion

AYES: 5 – Schwartz, Hounsel, Williams, Vermillion, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-015(SM)

BUILDING OFFICIAL'S REPORT:. Application of William Riseman represented by Nancy Riseman, for special exceptions to the fence height regulations and fence standards regulations at 932 Tipperary Drive. This property is more fully described as Lot 12, Block C/5373, and is zoned R-7.5(A), which limits the height of a fence in the front yard to four feet and requires fence panels with a surface area that is less than 50 percent open to be located a minimum of five feet from the front lot line. The applicant proposes to construct and/or maintain an eight-foot high fence in a required front yard, which will require a four-foot special exception to the fence regulations and to construct and/or maintain a fence with a fence panel having less than 50-percent open surface area located less than five feet from the front lot line, which will require a special exception to the fence regulations.

LOCATION: 932 Tipperary Drive

APPLICANT: William Riseman, represented by Nancy Riseman

REQUESTS: The following requests have been made to construct a fence in the front yard setback along Bridget Drive on the subject site:

1. A request for a special exception to the fence standards regulations related to the fence height of four feet to construct an eight-foot high fence in a required front yard, which will require a four-foot special exception to the fence regulations.

2. A request for a special exception to the fence standards regulations related to fence panels having less than 50 percent open surface area when located less than five feet from the front lot line to construct a solid wood fence within five feet of the front lot line.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS¹:

The applicant has the burden of proof in establishing the following standard has been met: The board may grant a special exception to the fence standards regulations when in the opinion of the board, the special exception will not adversely affect neighboring property.

STAFF RECOMMENDATIONS:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

There have been no related board or zoning cases near the subject site within the last five years.

GENERAL FACTS/STAFF ANALYSIS

The purpose of these requests is to construct an eight-foot tall wood fence in the front yard setback along Bridget Drive and within five feet of the front lot line on Bridget Drive

¹ Reference Section 51A-4.602(d)(3) of the Dallas Development Code.

on the subject site. Since the fence is proposed to exceed four feet in height within the front yard setback and the fence panels are proposed to have a surface area that is less than 50 percent open within five feet of the front lot line on Bridget Drive, board approval is required.

Regarding the fence height, the submitted site plan and fence elevations show an eight-foot high wood fence which encloses approximately 80 feet of the eastern portions of the subject site along Bridget Drive. Regarding the openness of the fence, the proposed eight-foot high wood fence which are less than five feet from the front lot line also requires a fence standards special exception.

The Dallas Development Code states

1. In all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard².
2. In single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line³.

On April 20, 2018, a demolition permit was completed to remove the previous single family home which included a wood fence that exceeded four feet in height which was less than five feet from the front lot line on Bridget Drive; however, board approval for the previous fence could not be found in the digital records which were kept since the early 2000s.

Staff conducted a field visit of the site and the surrounding area and noted no properties in the vicinity have solid wood fences above four feet in height or fences with fence panels with surface area that is less than 50 percent open

As of February 7, 2020, two letters in opposition and three letters in support to the requests have been received by staff.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height and prohibited materials the site will not adversely affect neighboring property.

If the board was to grant these special exceptions with a condition imposed that the applicant complies with the submitted site plan and fence elevation, it would require the portions of the fences which exceed four feet in height in the front yard setbacks and the portions with fence panels with surface area that is less than 50 percent open and within five feet of the front lot line to be constructed and maintained in the locations and of the heights and materials as shown on these documents.

² Reference Section 51A-4.602(a)(2) of the Dallas Development Code.

³ Reference Section 51A-4.602(a)(3) of the Dallas Development Code.

TIMELINE:

November 19, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 13, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

January 16, 2020: The Interim Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 7th 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.”

January 30, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.

February 7, 2020: The applicant’s representative submitted a letter to the board (see Attachment A).

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

BOARD OF ADJUSTMENT ACTION: February 19, 2020

APPEARING IN FAVOR:

Nancy Riseman 6301 Southpoint Dr. Dallas, TX.

APPEARING IN OPPOSITION:

Patricia Gaffney 1026 Tranquilla Dr. Dallas, TX.
Kirk Dooley 1154 Tranquilla Dr. Dallas, TX.
Krista de la Harpe 1189 Tranquilla Dr.
Tim Sexton 9930 Donegal Dr. Dallas, TX.

MOTION #1: Hounsel

I move that the Board of Adjustment, in Appeal No. BDA 190-015, on application of William Riseman, represented by Nancy Riseman, **deny** the special exception requested by this applicant to construct and/or maintain an eight-foot high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Vermillion

AYES: 5 - Schwartz, Hounsel, Vermillion, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0

MOTION #2: Hounsel

I move that the Board of Adjustment, in Appeal No. BDA 190-015, on application of William Riseman, represented by Nancy Riseman, **deny** the special exception 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 requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Vermillion

AYES: 5 - Schwartz, Hounsel, Vermillion, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA190-017(SM)

BUILDING OFFICIAL’S REPORT: Application of Santos T. Martinez of La Sierra Planning Group, for a special exception to the parking regulations at 3510 Ross Avenue. This property is more fully described as a tract of land within Block 513 and is zoned Subarea 1 within Planned Development District No. 298, which requires parking to be provided. The applicant proposes to construct and/or maintain a personal service use and provide 31 of the required 39 parking spaces, which will require an eight-space special exception (21-percent reduction) to the parking regulations.

LOCATION: 3510 Ross Avenue

APPLICANT: Santos T. Martinez of La Sierra Planning Group

REQUEST:

A request for a special exception to the off-street parking regulations of eight spaces is made to convert an existing florist use with 8,250 square feet of floor area to a personal service use and will provide 31 parking spaces (or 79 percent) of the 39 required parking spaces for 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 and when that use is changed or discontinued.
 - 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
 - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
 - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Denial.

The Sustainable Development and Construction Senior Engineer made the following statement:

The Institute of Transportation Engineers' Parking Generation manual (5th Edition) provides data for similar uses. It estimates a peak parking demand on a typical day anywhere between 39 and 70 parked vehicles. The applicant did not provide a parking analysis or data to justify the request.

BACKGROUND INFORMATION:

Zoning:

Site: Planned Development No. 298 (Subarea 1)

Northeast: Planned Development No. 298 (Subarea 1B)
Southeast: Planned Development No. 298 (Subarea 7)
Southwest: Planned Development No. 298 (Subarea 1)
Northwest: Planned Development No. 298 (Subarea 1A) with Specific Use
Permit No. 1819

Land Use:

The subject site is developed with vacant building which was previously occupied by a florist. Surrounding uses include a vacant vehicle or engine repair or maintenance shop to the northeast, a church and a construction site for a future multifamily use is to the southeast, parking lots to the southwest, and a multifamily use across Ross Avenue.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The purpose of this request for a special exception to the off-street parking regulations of eight spaces is made to convert an existing 8,250-square-foot building, previously occupied by a florist, to a personal service use⁴ which the applicant intends to operate as a gym or fitness center. The applicant proposes to provide 31 of the 39 required parking spaces parking spaces on the subject site.

The Dallas Development Code requires, one space for each 200 square feet of floor area for a personal service use and allows for a one-space parking reduction for each six bicycle parking spaces provided⁵. Therefore, the proposed 8,250-square-foot personal service use requires 39 parking spaces when a minimum of 12 bicycle parking spaces are provided.

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

- The parking demand generated by the personal service use on the site does not warrant the number of off-street parking spaces required, and
- The special exception of eight spaces would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

⁴ Personal service use means, "A facility for the sale of personal services. Typical personal service uses include a barber/beauty shop, shoe repair, a tailor, an instructional arts studio, a photography studio, a laundry or cleaning pickup and receiving station, a handcrafted art work studio, safe deposit boxes, a travel bureau, and a custom printing or duplicating shop." Reference Section 51A-4.210(23) of the Dallas Development Code.

⁵ Reference Section 51A-4.314 of the Dallas Development Code.

If the Board were to grant this request, and impose the condition that the special exception of eight spaces shall automatically and immediately terminate if and when the personal service use is changed or discontinued, the applicant would be allowed to lease and maintain the structure on the site with this specific use (“personal service use”) with the specified square footage, and provide 31 of the 39 code required off-street parking spaces.

Timeline:

November 21, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 13, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

January 14, 2020: The Interim Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 7th 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.”

January 30, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director..

January 30, 2020: The City of Dallas Sustainable Development and Construction Senior Engineer submitted a memo regarding this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: February 19, 2020

APPEARING IN FAVOR: Santos Martinez P.O. Box 1275 Angel Fire, NM 87710

APPEARING IN OPPOSITION: No one

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-017 **hold** this matter under advisement until **March 18, 2020** and re-advertise the case to include retail use.

SECONDED: Schwartz

AYES: 5 - Schwartz, Housel, Vermillion, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-019(SM)

BUILDING OFFICIAL’S REPORT: Application of Brad Beutel for a variance to the off-street parking regulations at 10615 Park Preston Drive. This property is more fully described as Lot 25, Block 6/5508, and is zoned TH-1(A), which requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and/or maintain a parking space in an enclosed structure with a setback of four feet 11 inches, which requires a variance of 15 feet one inch to the off-street parking regulations.

LOCATION: 10615 Park Preston Drive

APPLICANT: Brad Beutel

REQUESTS:

A request for a variance to the off-street parking regulations of 15 feet one inch is made to construct a garage that would be entered directly from the alley. The enclosed parking space is proposed to be located four feet 11 inches from the alley right-of-way line, which requires a variance of 15 feet, one inch to the off-street parking 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.

STAFF RECOMMENDATION:

Denial

Rationale:

Although the request is not seen to be contrary to public interest (the Sustainable Development and Construction Senior Engineer has submitted a Review Comment Sheet marked “no objections”), staff recommends denial because the applicant has not provided documentation to prove the following components of the variance standards were met prior to the January 30th Board of Adjustment staff review meeting:

- 1. how the variance was necessary to permit development of this parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope (in this case, the site is 7,813 square feet in area, rectangular in shape, and is flat) that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same TH-1(A) zoning where in this application, features of the site have allowed it to be developed with a single family home and enclosed parking (attached garage) that comply with setbacks; and
- 2. how granting this request would not be to relieve a self-created or personal hardship, nor for financial reasons only.

BACKGROUND INFORMATION:

Zoning:

Site: TH-1(A) (Townhouse District)
North: TH-1(A) (Townhouse District)
East: TH-1(A) (Townhouse District)
South: TH-1(A) (Townhouse District)
West: R-1/2ac(A) (Single Family District) with Deed Restriction No. Z73-304

Land Use:

The subject site is developed with a single-family home. The areas to the north, east, south, and west are developed with single family and duplex uses, and the Dallas North Tollway abuts the site on the west.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (parking variance):

The purpose of this request for a variance to the off-street parking regulations of 15 feet, one inch is to complete the construction of a garage and enclose what is now an attached carport that can be entered directly from the alley. The enclosed parking space is proposed to be located four feet 11 inches from the alley right-of-way line, which requires a variance of 15 feet one inch to the off-street parking regulations.

Section 51(A)-4.301(a)(9) of the Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.

The original structure contained a two-car garage that complied with the required 20-foot spacing for an enclosed parking space from the alley. A building permit was issued September 24, 2019 to convert the original garage into a master bedroom suite and covered parking. According to the submitted site plan, the proposed living area is 2,891 square feet and contains three bedrooms and three and a half bathrooms within a one-story structure.

The subject site is relatively flat, rectangular in shape, and, according to the site plan, is about 7,813 square feet in area. The site is zoned TH-1(A) where lots must be a minimum size of 2,000 square feet in area.

The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “has no objections” with the following comments: “Access point is located on a residential alley (without sidewalk). Request is commensurate to other properties and, therefore, is not considered contrary to public interest”.

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

- That granting the variance to the off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same TH-1(A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same TH-1(A) zoning classification.

If the board were to grant the request for a variance of 15 feet one inch, staff recommends imposing the following conditions which are suggested to help assure that the variance will not be contrary to the public interest:

1. Compliance with the submitted site plan is required.
2. An automatic garage door must be installed and maintained in working order at all times.

Timeline:

November 27, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 13, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

January 14, 2020: The Interim Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the

January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 7th 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."

January 30, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.

January 30, 2020: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments: "Access point is located on a residential alley (without sidewalk). Request is commensurate to other properties and, therefore, is not considered contrary to public interest."

February 6, 2020: The applicant submitted a letter to the board with supporting documentation for the requested variance (see Attachment A).

BOARD OF ADJUSTMENT ACTION: February 19, 2020

APPEARING IN FAVOR: Brad Beutel 10615 Park Preston Dallas, TX.

APPEARING IN OPPOSITION: None

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 190-019, on application of Brad Beutel, **grant** the 15-foot 1-inch variance to the off-street 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted site plan is required.
2. An automatic garage door must be installed and maintained in working order at all times.

SECONDED: Williams

AYES: 5 - Schwartz, Hounsel, Vermillion, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-026(SM)

BUILDING OFFICIAL’S REPORT: Application of Lucas Torres Flores for a variance to the side yard setback regulations at 4475 Marcell Avenue. This property is more fully described as Lot 11, Block L/5954, and is zoned R-7.5(A), which requires a side yard setback of five feet. The applicant proposes to construct and/or maintain a structure and provide a two-foot side yard setback, which will require a three-foot variance to the side yard setback regulations.

LOCATION: 4475 Marcell Avenue

APPLICANT: Lucas Torres Flores

REQUEST:

A request for a variance to the side yard setback regulations of three feet is made to complete and maintain the west facade of a single family home structure located two feet from the site’s west side property line or three feet into the five-foot side yard setback.

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.

STAFF RECOMMENDATION:

Denial

Rationale:

Staff concluded that while granting this variance request for a single family structure to encroach three feet inches into a five-foot side yard setback would not appear to be contrary to public interest and although the site is smaller than the minimum lot size of the R-7.5(A) zoning district (6,930 square feet vs. 7,500 minimum square feet) and has a slight slope, the request should be denied because the applicant had not provided evidence to the following components of the variance standard prior to the deadline for the January 30th staff review team meeting:

1. how the variance was necessary to permit development of this 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 R-7.5(A) zoning district (the applicant provided no information related to this); and
2. how granting this request would not be to relieve a self-created or personal hardship, nor for financial reasons only.

BACKGROUND INFORMATION:

Zoning:

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

West: R-7.5(A) (Single Family District)

Land Use:

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

GENERAL FACTS /STAFF ANALYSIS:

The purpose of this request for variance to the side yard setback regulations of three feet is to complete and maintain the west facade of a single family home structure located two feet from the site's west side property line, as shown in the submitted site plan. According to permit records, a permit for new construction was issued on June 27, 2016.

The subject site is 6,930 square feet in area, is rectangular in shape, and has a slight slope. The R-7.5(A) zoning district requires a minimum lot area of 7,500 square feet.

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 R-7.5(A) zoning classification.

- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

If the board were to grant the 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

these documents which, in this case, is a structure located three feet into the required five-foot side yard setback.

Timeline:

December 31, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 13, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

January 14, 2020: The Interim Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 7th 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.”

January 30, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.

February 6, 2020: The applicant submitted a letter to the board and supporting documentation for the requested variance (see Attachment A).

No review comment sheets were submitted in conjunction with

this application.

BOARD OF ADJUSTMENT ACTION: February 19, 2020

APPEARING IN FAVOR: Lucas Flores 4475 Marcell Avenue Dallas TX.

APPEARING IN OPPOSITION: None

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 190-026, on application of Lucas Torres Flores, **grant** the three-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: Williams

AYES: 5 - Schwartz, Hounsel, Vermillion, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

The meeting was adjourned **at 2:41 P.M. on February 19, 2020.**

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.