

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, March 18, 2019**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Robert Agnich, regular member Matt Shouse, regular member, Gary Sibley, alternate member, Phil Sahuc, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Robert Agnich, regular member Matt Shouse, regular member, Gary Sibley, alternate member, Phil Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, Phil Erwin, Chief Arborist, Elaine Hill, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, Phil Erwin, Chief Arborist, Elaine Hill, Board Secretary

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**11:12 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment’s March 18, 2019 docket.

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**1:08 P.M.**  
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board’s inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel C, February 21, 2019 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: March 18, 2019**

**MOTION: Agnich**

I move to accept the minutes from February 21, 2019.

**SECOND: Shouse**

**AYES:** 5 – Richardson, Shouse, Agnich, Sibley, Sahuc

**NAYS:** 0

**MOTION PASSED:** 5 – 0

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**FILE NUMBER:** BDA189-026(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Alfredo R. Ruiz for a special exception to the fence standards regulations at 1725 Sunview Drive. This property is more fully described as PT Lot 20, Block 8826, and is zoned R-7.5(A), which prohibits the use of certain materials for a fence. The applicant proposes to construct and/or maintain a fence of a prohibited material, which will require a special exception to the fence standards regulations.

**LOCATION:** 1725 Sunview Drive

**APPLICANT:** Alfredo R. Ruiz

**REQUEST:**

A request for a special exception to the fence standards regulations is made to maintain a fence of a prohibited fence material (sheet metal) on a site developed with a single-family home.

**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-7.5(A) (Single family residential 7,500 square feet)  
North: R-7.5(A) (Single family residential 7,500 square feet)  
South: R-7.5(A) (Single family residential 7,500 square feet)  
East: R-7.5(A) (Single family residential 7,500 square feet)  
West: R-7.5(A) (Single family residential 7,500 square feet)

**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 uses.*

**Zoning/BDA History:**

There have 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 request for a special exception to the fence standards regulations related to fence materials focuses on maintaining a fence of a prohibited fence material (sheet metal) on a site developed with a single-family home.
- Section 51A-4.602(a)(9) of the Dallas Development Code states that except as provided in this subsection, the following fence materials are prohibited:
  - Sheet metal;
  - Corrugated metal;
  - Fiberglass panels;
  - Plywood;
  - Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
  - Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and
  - Barbed wire razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.
- The applicant has submitted a site plan and elevation that represents the location of the existing sheet metal fence on the property.
- The submitted elevation represents an 8' high sheet metal fence.
- The submitted site plan represents a site that is approximately 54,000 square feet in area where approximately 470 linear feet of prohibited fence material (sheet metal fence) is located on this property.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and the surrounding area. Three other fences that appear to be of prohibited material were noted to the south and east of the subject site. These existing fences have no recorded BDA history.

- As of March 8, 2019, no letters in opposition have been submitted, and a petition in support with 7 signatures has been submitted (see Attachment A).
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to a prohibited fence material (sheet metal) will not adversely affect neighboring property.
- If the Board were to grant the special exception and impose the submitted site plan and elevation as a condition, the fence of prohibited material on the property would be limited to what is shown on these documents.

**Timeline:**

December 28, 2018: 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 12, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 13, 2019: The Sustainable Development and Construction Department Senior Planner, emailed the applicant’s representative the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the February 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 25, 2018: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

March 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. 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, and the Assistant City Attorney to the Board

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

**BOARD OF ADJUSTMENT ACTION: March 18, 2019**

**APPEARING IN FAVOR:** Jorge Ruiz, 1725 Sunview Dr., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Sibley**

I move that the Board of Adjustment, in Appeal No. BDA 189-026, on application of Alfredo Ruiz **deny** the special exception requested by this applicant to maintain a fence of a prohibited material, sheet metal, **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

**SECOND: Sahuc**

**AYES: 3 – Richardson, Sibley, Sahuc**

**NAYS: 2 – Shouse, Agnich**

**MOTION PASSED: 3 – 2**

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**FILE NUMBER: BDA189-030(OA)**

**BUILDING OFFICIAL’S REPORT:** Application of Rob Baldwin of Baldwin Associates for a special exception to the landscape regulations at 2620 Maple Avenue. This property is more fully described as Lot 1B, block 3/950, and is zoned PD 193 (HC), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION: 2620 Maple Avenue**

**APPLICANT: Rob Baldwin**

**March 18, 2019 Public Hearing Notes:**

- The Sustainable Development and Construction Department Board of Adjustment Senior Planner circulated an email to the Board at the briefing from the applicant who requested that this application be delayed until the April 2019 hearing.

**REQUEST:**

A request for a special exception to the landscape regulations is made to construct and maintain a multifamily development with a parking structure on a site that is undeveloped, and not to fully provide the required landscape regulations, more specifically, to not meet the required garage screening and landscaping buffer.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:**

Section 51P-193-126(a) (4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit, and that the property complies with a landscape plan as a condition to granting the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the special exception on the basis that it does not appear the request will compromise the spirit and intent of this ordinance.

**BACKGROUND INFORMATION:**

Site: PD 193 (HC) (Planned Development District)  
North: PD 193 (HC) (Planned Development District) & PD 9 (Planned Development District)  
South: PD 193 (HC) (SUP#925) (Planned Development District, SUP for a Drive-in facility for a savings loan office)  
East: PD 193 (HC) (Planned Development District)  
West: PD 193 (HC) (Planned Development District) & PD 9 (Planned Development District)

**Land Use:**

The subject site is undeveloped. The areas to the north, east, west and south are developed with mixed uses.

**Zoning/BDA History:**

1. BDA156-076, Property at 100 Crescent Court (the property southwest of the subject site)

On March 21, 2017, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the following conditions:

compliance with the submitted alternate landscape plan is required.

The case report stated the request was made to amend certain features shown on an alternate landscape plan (including but not limited to constructing and maintaining an approximately 450 square foot outside pavilion to a restaurant use within the mixed use development) that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on August 16, 2016: BDA156-076 on the site currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent).

2. BDA156-076, Property at 100 Crescent Court (the property southwest of the subject site)

On August 16, 2016, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the following conditions: 1) compliance with the submitted alternate landscape plan is required; and 2) All landscape improvements in each landscape area on the property as shown on the submitted revised landscape plan must be completed within 18 months of Board action, and landscape improvements for areas B and D as shown on the submitted landscape plan must be completed before the final building inspections of each permit in areas B and D, respectively.

The case report stated the request was made to amend certain features shown on an alternate landscape plan that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on March 17, 2015: BDA145-037. The subject site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent). Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on November 15, 2016).

3. BDA145-037, Property at 100 Crescent Court (the property southwest of the subject site)

On March 17, 2015, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition.

The case report stated the request was made to replace an existing drive-through bank facility with an approximately 3,000 square foot restaurant, and not fully providing required landscaping on a site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent) (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on June 28, 2016).

4. BDA 134-042, Property at 100 Crescent Court (the property southwest of the subject site)

On June 24, 2014, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition.

The case report stated the request was made to construct and maintain an approximately 1,400 square foot addition to an approximately 1,450,000 square foot mixed use development (The Crescent), and not fully providing required landscaping. (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two-year time limitation to refile a new application on this site on January 20, 2015).

**GENERAL FACTS/ STAFF ANALYSIS:**

- This request for a special exception to the landscape regulations focuses on constructing and maintaining a multifamily development with a parking structure on a site that is undeveloped and not to fully providing the required landscaping regulations, more specifically, to not meet the required perimeter landscape buffer strip along the alley.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of

the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A).
- The Chief Arborist's memo states the following with regard to "request":
  - The applicant is requesting a special exception to the landscaping regulations of PD 193, Part 1 for HC districts. The alternative landscape plan is for new construction of a multifamily development without the required garage screening and landscaping buffer.
- The Chief Arborist's memo states the following with regard to "provision":
  - The proposed alternative landscape plan complies with PD 193(HC) regulations for street trees, sidewalks, and screening of off-street parking. Other standards for landscape site area and general or special plantings are not applicable.
- The Chief Arborist's memo states the following with regard to "deficiencies":
  - The plan does not provide for the required garage screening and landscaping as described in Section 51P-193.126 (b) (3) (D). Aboveground parking structures are required to have a 10-foot landscaping buffer on any side facing a public right-of-way, residential district, residential subdistrict, or residential use, and have a minimum of one tree for every 25 feet of frontage and evergreen shrubs planted three feet on center to create a solid appearance.
  - The building area on the lot, the requirement for a fire lane in conjunction with the alley, and the location of local utilities along the perimeter restrict the use of the space for landscaping.
- The City of Dallas Chief Arborist recommends approval of the special exception on the basis that it does not appear the request will compromise the spirit and intent of this ordinance.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the required garage screening and landscaping buffer of the PD 193 landscape requirements) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards".
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted an exception from full compliance to the requirements of the PD 193 landscape ordinance.

### **Timeline:**

- January 9, 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.
- February 12, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

February 13, 2019: The Sustainable Development and Construction Department Board of Adjustment 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<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. 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, and the Assistant City Attorney to the Board.

March 7, 2019: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

**BOARD OF ADJUSTMENT ACTION:**

**March 18, 2019**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Sahuc**

I move that the Board of Adjustment in Appeal No. BDA 189-030 hold this matter under advisement until April 15, 2019.

SECOND: **Sibley**

AYES: 5 – Richardson, Shouse, Agnich, Sibley, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA189-032(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Sarah Scott for a variance to the front yard setback regulations at 8109 Manderville Lane. The property is more fully described as Lot 2, Block B/7291, and is zoned PD 895, which requires a minimum front yard of 10 feet and a maximum front yard for residential or mixed-use buildings of 15 feet where a portion of a front facade equal to at least 50 percent of the length of the lot, excluding pedestrian and vehicular ingress and egress points, must be located within the area between the minimum and maximum front yard setbacks. The applicant proposes to construct and/or maintain a residential structure and not provide at least 50 percent of the length of the facade between the minimum and maximum front yard setbacks, which will require a variance to the front yard setback regulations.

**LOCATION:** 8109 Manderville Lane

**APPLICANT:** Sarah Scott

**REQUEST:**

A request for variance to the PD 895 minimum and maximum front yard setback regulations is made to construct and maintain a 5-story apartment building with a 7-story parking structure and not to provide at least 50 percent of the length of the façade required to be located between the 10’ minimum and 15’ maximum front yard setback on a site that is undeveloped.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code Section 51A-3.102(d) (10) 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:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from other lots in the PD 895 zoning district by its restrictive area and slope. The site has an approximately 56' wide creek/floodway easement and slope that preclude the applicant from developing the site with a structure that can be in compliance with the front yard setback regulation - a front yard setback provision that requires a minimum front yard of 10 feet and a maximum front yard of 15 feet where a portion of a structure's front facade equal to at least 50 percent of the length of the lot must be located within the area between the minimum and maximum front yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD 895 (Planned Development)
- North: PD 745 (Subarea C) (Planned Development)
- South: PD 927 (Subarea A) (Planned Development), MF-2 (Multifamily District 2), & MU-3 (Mixed-use District 2)
- East: PD 745 (Subarea B) (Planned Development)
- West: PD 895 (Planned Development)

**Land Use:**

The subject site is undeveloped. The areas to the north, south, and west are developed with multifamily, medical, and hotel uses; and the area to the east is developed with public utility (Dart Railroad) use.

**Zoning/BDA History:**

There have 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 request for variance to the required front yard setback regulations focuses on constructing and maintaining a 5-story apartment building with a 7-story parking structure and not providing at least 50 percent of the length of the façade required to be located between the 10' minimum and 15' maximum front yard setback on a site that is undeveloped.
- The subject site is located in PD 895.
- PD 895 states the following with regard to "front yard":
  1. Minimum front yard 10'.
  2. Maximum front yard is 15'.
  3. A portion of the front façade equal to at least 50 percent of the length of the lot, excluding pedestrian and vehicular ingress and egress points, must be located within the area between the minimum and maximum front yard setbacks. The

remainder of the façade (less than 50 percent of the length of the lot) must comply with the minimum front yard setback only.

- According to DCAD records, there are “no improvements” for property addressed at 8109 Manderville Lane.
- The subject site is sloped, irregular in shape, and according to the application is approximately 4.51 acres in area.
- The submitted site plan denotes the site has a 56’ 6’ wide floodway easement fronting Manderville Lane. This floodway easement prevents placing any portion of the proposed building façade within this floodway easement that is part of the 157’ 9” length of the site’s frontage.
- The submitted site plan denotes a variance to the 50 percent of the length of the façade required to be located between the 10’ minimum and 15’ maximum front yard setback. The submitted site plan makes the following notations:
  - The site is 4.51 acreages.
  - The lot length is 157’ 9”.
  - The existing drive length is 30’ 6”.
  - Proposed combined pedestrian walkway length is 13’ 5”.
  - The applicable lot length (excluding pedestrian and vehicular ingress and egress points) per PD is 113’ 8”.
  - The required façade length that must be provided is 50 percent of 113’ 8” or 56’ 9”.
  - The proposed façade length provided is 25 percent or 29’ 1”.
  - Existing floodway easement length fronting Manderville Lane 56’ 1”.
- The applicant has provided a document stating among other things, that the subject site is unique in that it contains a natural creek/floodway easement with steep slopes and many trees. This document states that the natural 56’ 1” creek/floodway easement prevents the site from building in this floodway area. The document indicates that the available total length frontage is 57’ 7” due to the 56’ 1” creek/floodway easement (after excluding pedestrian and vehicular ingress and egress points) and illustrated steep grades adjacent to the creek/floodway easement that preclude the applicant from complying with the 50 percent of the length of the facade between the minimum and maximum front yard setbacks.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
  - The variances to front yard setback regulations are 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 PD 895 zoning classification.
  - The variances to front yard 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 PD 895 zoning classification.

- If the Board were to grant the request for a variance to the front yard setback regulations and impose the applicant's submitted site plan as a condition, the structure that does not comply the 50 percent façade minimum and maximum front yard setback requirements would be limited to that what is shown on this document.

**Timeline:**

January 22, 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.

February 12, 2019: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel C.

February 13, 2019: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the February 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

February 27, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

March 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. 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, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: March 18, 2019**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move that the Board of Adjustment, in Appeal No. BDA 189-032, on application of Sarah Scott **grant** the following application for a variance to the front yard setback regulations contained in the Dallas Development Code, subject to the following condition:

- Compliance with the submitted site plan is required.

SECOND: **Sahuc**

AYES: 5 – Richardson, Shouse, Agnich, Sibley, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA189-033(OA)

**BUILDING OFFICIAL’S REPORT:** Application of David Lloyd, represented by Braden Wayne, for a variance to the front yard setback regulations at 4803 Victor Street. This property is more fully described as 1/2 PT Lot 7, Block A/795, and is zoned PD 98, which requires a front yard setback of 25 feet. The applicant proposes to construct and/or maintain a structure and provide an 18-foot 10 inch front yard setback, which will require a 6-foot 2 inch variance to the front yard setback regulations.

LOCATION: 4803 Victor Street

APPLICANT: David Lloyd  
Represented by Braden Wayne

**March 18, 2019 Public Hearing Notes:**

- The Sustainable Development and Construction Department Board of Adjustment Senior Planner circulated an email to the Board at the briefing from the applicant who requested that this application be delayed until the April 2019 hearing.

**REQUEST:**

A variance request to the front yard setback regulations for PD 98 is made to construct/maintain a two-story single family home structure with a total “slab area” of approximately 1,800 square feet or with a total “home size” of approximately 3,200 square feet to be located 18’ 10” from one of the site’s two required front yards (N. Prairie Avenue) or 6’ 2” into this 25’ front yard setback on a site that is undeveloped.

## **STANDARD FOR A FRONT YARD VARIANCE FOR PD 98:**

PD 98 Section 51P-98.107(b)(3) states that the board of adjustment shall have the authority to grant variances from the terms of this article, in accordance with regulations and procedures specified in Article XXIX of Chapter 51 in the following matters:

- Permit such variances of the front yard, side yard, rear yard, lot width, lot depth, coverage, minimum sidewalk or setback standards, off-street parking or off-street loading, or visibility obstruction regulations 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 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 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.

## **STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the PD 98 zoning district. It is restrictive in area due to having two, 25' front yard setbacks when most lots in this zoning district have one 25' front yard setback. The 50' wide subject site has 20' of developable width available once a 25' front yard setback is accounted for on the southwest and a 5' side yard setback is accounted for on the northeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width. In addition, the variance should be granted because of the restrictive area of the subject site at only 5,300 square feet in the PD 98 zoning district where lots are typically 7,500 square feet.
- In addition, staff concluded that the applicant has shown by submitting a document indicating among other things that the total home size of the proposed home on the subject site is approximately 2,650 square feet, and the average of 12 other properties in the same PD 98 zoning is approximately 3,050 square feet.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD 98 (Planned Development)  
North: PD 98 (Planned Development)  
South: PD 98 (Planned Development)

East: PD 98 (Planned Development)  
West: PD 98 (Planned Development)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA145-040, Property at 4803 Victor Street (the subject site)

On November 12, 2018, the Board of Adjustment Panel C denied variance requests to the front yard setback and to the fence height regulations without prejudice.

The case report stated that the requests were made to construct/maintain a two-story single family home structure with a total “slab area” of approximately 1,800 square feet or with a total “home size” of approximately 3,100 square feet to be located 13’ 10” from one of the site’s two front property lines (N. Prairie Avenue) or 11’ 2” into this 25’ front yard setback and to construct/maintain a fence (an 8’ high solid board-on-board wood fence) higher than 4’ in height in one of the site’s two required front yards (N. Prairie Avenue) on the subject site.

1. BDA145-040, Property at 4734 Tremont Street (two lots northwest of the subject site)

On April 22, 2015, the Board of Adjustment Panel B granted a variance to the front yard setback regulations.

The case report stated that the requests were made to replace an existing one-story nonconforming single-family home structure on the subject site with a two-story single family home with (according to the submitted revised site plan) a building footprint of about 2,000 square feet and a total living area of about 2,600 square feet, part of which would be located 5’ from one of the site’s two front property lines (N. Prairie Avenue) or 20’ into this 25’ front yard setback.

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for a variance to the front yard setback regulations of 6’ 2” focuses on constructing and maintaining a two-story single family home structure with a total

“slab area” of approximately 1,800 square feet or with a total “home size” of approximately 3,200 square feet to be located 18’ 10” from one of site’s two required front yards (N. Prairie Avenue) or 6’ 2” into this 25’ front yard setback.

- PD 98 states that general standards for development of single-family uses with regard to setbacks must be in accordance with the provisions of the Residential - 7,500 Square Feet District of Chapter 51. Structures on lots zoned R-7.5 are required to provide a minimum front yard setback of 25.
- The subject site is located at the northwest corner of Victor Street and N. Prairie Avenue. Regardless of how the structure is proposed to be oriented to front Victor Street, the subject site has 25’ front yard setbacks along both street frontages. The site has a 25’ front yard setback along Victor Street, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25’ front yard setback along N. Prairie Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5’ side yard setback is required. However, the site’s N. Prairie Avenue frontage that would function as a side yard on the property is treated as a front yard setback nonetheless, to maintain the continuity of the established front yard setback established by the lots to the northwest that front/are oriented southwest towards N. Prairie Avenue.
- The submitted site plan indicates that the proposed home structure is located as close as 18’ 10’ from the N. Prairie Avenue front property line or 6’ 2” into this 25’ front yard setback.
- According to DCAD records, there are no “main improvement” or “no additional improvements” for property addressed at 4803 Victor Street.
- The subject site is flat, regular in shape and according to the submitted application is 0.121 acres (or approximately 5,300 square feet) in area. The site is zoned PD 98 where lots are typically 7,500 square feet in area.
- Most lots in the PD 98 zoning district have one 25’ front yard setback, two 5’ side yard setbacks, and one 5’ rear yard setback; this site has two 25’ front yard setbacks and one 5’ side yard setback.
- The site plan represents that approximately 1/4 of the home structure is located in the 25’ N. Prairie Avenue front yard setback.
- The 50’ wide subject site has 20’ of developable width available once a 25’ front yard setback is accounted for on the southwest and a 5’ side yard setback is accounted for on the northeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 50’ wide site would have 40’ of developable width.
- The applicant submitted a document with this application, indicating among other things that the total living area of the proposed home on the subject site is approximately 2,650 square feet, and the average total living area of 12 other properties in the same zoning is approximately 3,050 square feet.
- The applicant has the burden of proof in establishing the following:
  - 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 front yard setback would be limited to what is shown on this document– which in this case is a home structure that would be located 18’ 10” from one of the site’s two front property lines (N. Prairie Avenue) or 6’ 2” into this 25’ front yard setback.

**Timeline:**

- January 23, 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.
- February 12, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.
- February 13, 2019: 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<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standards that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- February 27, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- March 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. 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, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: March 18, 2019**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** Edward Anderson, 4726 Victor St., Dallas, TX

**MOTION: Agnich**

I move that the Board of Adjustment in Appeal No. BDA 189-033 hold this matter under advisement until April 15, 2019.

**SECOND: Sahuc**

**AYES: 5 – Richardson, Shouse, Agnich, Sibley, Sahuc**

**NAYS: 0**

**MOTION PASSED: 5 – 0**

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**FILE NUMBER: BDA189-019(OA)**

**BUILDING OFFICIAL’S REPORT:** Application of Brett Brodnax, represented by Jason Vander Vorste, for special exceptions to the fence standards regulations at 5014 Lakehill Court. This property is more fully described as Lot 08, Block 1/5544, and is zoned R-1(A), which limits the height of a fence in the front yard to 4 feet, prohibits the use of certain materials for a fence, 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 9 foot high fence in a required front yard, which will require a 5 foot special exception to the fence standards regulations, and to construct and/or maintain a fence of a prohibited material, which will require a 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: 5014 Lakehill Court**

**APPLICANT: Brett Brodnax  
Represented by Jason Vander Vorste**

**ORIGINAL FEBRUARY 21, 2019 REQUESTS:**

The following requests for special exceptions to the fence standards regulations had 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 related to height of 5' is made to construct and maintain a fence higher than 4' in height in the site's front yard setback – a 6' high solid iron panel fence, a 5' 10" pedestrian wood gate with a 6' 4" stone column, and a 6' wood/metal gate with 9' stone columns;
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 less than 5' from the front lot line, is made to construct and maintain the aforementioned 6' high solid iron panel fence located less than 5' from this front lot line; and
3. A request for a special exception to the fence standards regulations related to prohibited materials is made to maintain a fence of a prohibited fence material (metal gate) – in this case, the aforementioned wood/metal gate.

### **REVISED MARCH 18, 2019 REQUEST:**

A request for a special exception to the fence standards regulations related to height of 5' is made to construct and maintain a 5' 10" pedestrian wood gate with a 6' 4" stone column, and a 7' 9" wood and metal rods vehicular gate with 9' stone columns in the required front yard on a site being developed with a single-family home.

(Note that the original for requests a special exception to the fence standards regulations related to fence panels less than 50 percent open and to the fence standards regulations related to prohibited materials are no longer necessary due to the applicant amending his request on February 27<sup>th</sup> with an amended site plan and elevation (see Attachment A).)

### **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-1ac (A) (Single family district 1 acre)  
North: R-1ac (A) (Single family district 1 acre)

South: R-1ac (A) (Single family district 1 acre)  
East: R-1ac (A) (Single family district 1 acre)  
West: R-1ac (A) (Single family district 1 acre)

**Land Use:**

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

**Zoning/BDA History:**

There have 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:**

- Originally, the focus of the requests for special exceptions to the fence standards regulations on a site being developed with a single-family home were:
  - 1) constructing/maintaining a 6' high solid iron panel fence, a 5' 10" pedestrian wood gate with a 6' 4" stone column, and a 6' wood/metal gate with 9' stone columns located in this front yard setback;
  - 2) constructing/maintaining the aforementioned existing 6' high solid iron panel fence with panels with surface areas that are less than 50 percent open located less than 5' from this front lot line; and,
  - 3) constructing/maintaining the existing fence made of a prohibited fence material (metal gate).
- However, on February 27, 2019, the applicant submitted a revised site plan and revised elevation that modified the original requests (see Attachment A). The revised request now only focuses on constructing/maintaining a 5' 10" pedestrian wood gate with a 6' 4" stone column, and a 7' 9" wood and metal rods vehicular gate with 9' stone columns in the required front yard on a site being developed with a single-family home.
- 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 R-1ac (A) and has a 40' front yard setback.
- The applicant had submitted a revised site plan and revised elevation that shows the proposal in the front yard setback reaching a maximum height of 9'.
- The following additional information was gleaned from the submitted revised site plan:
  - The proposal is represented as being approximately 24' in length parallel to the Lakehill Court, and 10' perpendicular to Lakehill Court on the north side of the site in this front yard setback.
  - The proposal is represented as being located approximately 10' from the front property line or approximately 20' from the pavement line.

- The Board Senior Planner conducted a field visit of the site and surrounding area (approximately 400 feet north of the subject site) and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of March 8, 2019, no letters have been submitted in support and 1 letter was submitted in opposition to the original requests.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to fence height of 5' will not adversely affect neighboring property.
- Granting this revised special exception with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would require the proposal exceeding 5' in height to be located in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

November 27, 2018: 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 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 9, 2019: The Sustainable Development and Construction Department Senior Planner, emailed the applicant's representative the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the January 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

February 5, 2019: 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 Building Official, the Assistant Building Official, 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, and the Assistant City Attorney to the Board.

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

February 21, 2019: The Board of Adjustment Panel C conducted a public hearing on this application, and delayed action on this application until the next public hearing to be held on March 18, 2019 to allow the applicant to modify his special exception requests to the fence standards.

February 25, 2019: The Board Senior Planner wrote the applicant a letter of the board's action; the February 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis, and the March 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

February 27, 2019: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. 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, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: March 18, 2019**

**APPEARING IN FAVOR:** Jason Vander Vorste, 6644 Rockwood Dr., Tyler, TX

**APPEARING IN OPPOSITION:** No one

**MOTION 1 of 3: Sibley**

I move that the Board of Adjustment, in Appeal No. BDA 189-019, on application of Brett Brodnax, represented by Jason Vander Vorste, **grant** the request of this applicant to construct and/or maintain a nine-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.

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

- Compliance with the submitted revised site plan and revised elevation is required.

SECOND: Sahuc

AYES: 5 – Richardson, Shouse, Agnich, Sibley, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0

MOTION 2 OF 3: Sahuc

I move that the Board of Adjustment, in Appeal No. BDA 189-019, on application of Brett Brodnax, represented by Jason Vander Vorste, **deny** the special exception requested by this applicant to construct and/or maintain a fence with panels with surface areas that are less than 50 percent open located less than 5' from this front lot line **without** prejudice, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECOND: Agnich

AYES: 5 – Richardson, Shouse, Agnich, Sibley, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0

MOTION 3 OF 3:

I move that the Board of Adjustment, in Appeal No. BDA 189-019, on application of Brett Brodnax, represented by Jason Vander Vorste, **deny** the special exception requested by this applicant to construct and/or maintain a fence of a prohibited material, metal gate, **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECOND: Shouse

AYES: 5 – Richardson, Shouse, Agnich, Sibley, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0

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The meeting was adjourned at 1:50 p.m. on March 18, 2019.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

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BOARD SECRETARY

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