

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE/COUNCIL CHAMBERS  
TUESDAY, APRIL 19, 2022**

MEMBERS PRESENT AT BRIEFING: David A. Neumann, Chair, regular member, Jay Narey, regular member, Sarah Lamb, regular member, Lawrence Halcomb, regular member and Kathleen Frankford, regular member

MEMBERS ABSENT FROM BRIEFING: None

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., LaTonia Jackson, Board Secretary, Robyn Gerard, Senior Public Information Officer, Charles Trammell, Development Code Specialist, David Nevarez, Senior Traffic Engineer

MEMBERS PRESENT AT HEARING: David A. Neumann, Chair, regular member, Jay Narey, regular member, Sarah Lamb, regular member, Lawrence Halcomb, regular member and Kathleen Frankford, regular member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., LaTonia Jackson, Board Secretary, Robyn Gerard, Senior Public Information Officer, Charles Trammell, Development Code Specialist, David Nevarez, Senior Traffic Engineer

**9:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 19, 2022** docket.

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**11:05 A.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**

The Board of Adjustment Panel A met in a closed executive session prior to calling to order the Panel A hearing on April 19, 2022 in room 5BN.

**MISCELLANEOUS ITEM NO. 2**

Vote to postpone approval of Board of Adjustment Panel A, March 22, 2022 public hearing minutes to amend any changes prior to May 17, 2022 hearing.

**BOARD OF ADJUSTMENT ACTION: April 19, 2022**

**MOTION: Neumann**

Vote to postpone approval of Board of Adjustment Panel A, March 22, 2022 public hearing minutes to amend any changes prior to May 17, 2022 hearing.

**SECONDED: Narey**

**AYES: 5 – Lamb, Halcomb, Narey, Frankford, Neumann**

**NAYS: 0**

**MOTION PASSED: 5 – 0 (unanimously)**

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**FILE NUMBER: BDA212-028(JM)**

**BUILDING OFFICIAL’S REPORT:** Application of Matthew Morgan represented by Roger Albright to appeal the decision of the administrative official at 11411 E. Northwest Hwy., Suite 111. This property is more fully described as Lot 1C, Block A/8043, and is zoned RR Regional Retail District, which requires that the building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

**LOCATION: 11411 E. Northwest Highway, Suite 111**

**APPLICANT: Matthew Morgan represented by Roger Albright**

**REQUEST:**

A request is made to appeal the decision of the administrative official, more specifically, the Building Official’s authorized representative, the Assistant Building Official in Development Services, to deny an application for a Certificate of Occupancy for a restaurant and/or commercial amusement (inside) use determined to be a gambling place, which does not comply with other regulations.

**UPDATES:**

No new information was provided by the docket deadline on April 8, 2022.

**STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

**STAFF RECOMMENDATION:**

Staff does not make a recommendation on appeals of the decisions of administrative officials.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: RR Regional Retail District  
Northwest: R-7.5(A) Single Family District  
North: MF-1(A) Multifamily District  
East: MC-4 Multiple Commercial District  
South: MC-4 Multiple Commercial and CR Community Retail Districts  
West: RR Regional Retail District

**Land Use:**

The subject site is developed with a mix of commercial uses within multiple suites. Surrounding land uses include single-family to the northwest; multifamily to the north; and commercial uses to the east, south, and west.

**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 board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

- CO No. 2105031098 for a commercial amusement (inside) use issued on 6/22/21.

- CO revoked by Assistant Building Official Megan Wimer on 12/17/21.
  - Issued in error.
  - In violation of the Texas Penal Code Section 47.04, “Keeping a Gambling Place.”
  - Pursuant to Paragraph (1) of Section 306.5, “Denial,” of Chapter 52, “Administrative Procedures for the Construction Codes,” of the Dallas City Code, the building official shall deny an application for a CO if determined that the request does not comply with the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws of regulations.

**Timeline:**

- February 2, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 14, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 15, 2022: The Board of Adjustment Chief Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the appeal of a decision of an administrative official procedure outline; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- February 28, 2022: The applicant’s attorney submitted additional evidence for consideration (**Attachment A**).
- March 2, 2022: 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 following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the

Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board. No review comment sheets were submitted in conjunction with this application.

March 11, 2022: The City's attorney submitted additional evidence for consideration (**Attachment B**).

April 8, 2022: No new information was provided by the docket deadline.

BOARD OF ADJUSTMENT ACTION: March 22, 2022

APPEARING IN FAVOR: Roger Albright 11411 W. NW Hwy. #111 Dallas, TX  
Matt Morgan 11411 W. NW Hwy #111 Dallas, TX

APPEARING IN OPPOSITION: Gary Powell 1500 Marilla St. Dallas, TX  
Megan Wimer 320 E. Jefferson Blvd. Dallas TX

MOTION: Lamb

I move that the Board of Adjustment in request No. BDA 212-028, hold this matter under advisement until April 19, 2022.

SECONDED: Halcomb  
AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann  
NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: April 19, 2022**

APPEARING IN FAVOR: Roger Albright 11411 W. NW Hwy. #111 Dallas, TX

APPEARING IN OPPOSITION: Gary Powell 1500 Marilla St. Dallas, TX  
Megan Wimer 320 E. Jefferson Blvd. Dallas TX

MOTION: Neumann

I move that the Board of Adjustment in Appeal No. BDA 212-028, **hold** this matter under advisement until **May 17, 2022**.

SECONDED: Lamb  
AYES: 5 – Lamb, Halcomb, Narey, Frankford, Neumann  
NAYS: 0 –  
MOTION PASSED: 5 - 0 (unanimously)

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**FILE NUMBER:** BDA212-013(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Diana Flores represented by Alfredo Pena for a special exception to the single-family use regulations at 1134 Mountain Lake Road. This property is more fully described as Lot 3 in City Block 1/4802 and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit ADU (not for rent) in addition to the main structure. As proposed, the request will require a special exception to the single-family use regulations for an additional structure.

**LOCATION:** 1134 Mountain Lake Road

**APPLICANT:** Diana Flores represented by Alfredo Pena

### **REQUESTS:**

The applicant proposes to construct and maintain an additional dwelling unit (not for rent) on a site developed with a single-family dwelling and an existing detached garage.

### **UPDATES:**

On March 30, 2022, the representative requested to revise the request to remove the variance request to exceed 25 percent of the floor area ratio of the main structure.

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

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

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

### **STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when *in the opinion of the board*, the additional dwelling unit will not adversely affect neighboring properties.

### **STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures **accessory to single-family uses**, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

### **State Law/HB 1475 effective 9-1-21**

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

The request for a special exception to the single-family use regulations focus on constructing and maintaining an additional dwelling unit (non-rent) on a property zoned an R-7.5(A) Single Family District. In this district, one dwelling unit is allowed per lot.



DCAD records indicate the following improvements for the property located at 1134 Mountain Lake Road: “main improvement: a structure with 1,596 square feet of living area built-in 1940” and “additional improvements: a 504-square-foot detached garage. However, the proposed site plan reflects a floor area for the construction of an 1812-square-foot main structure and a detached garage with approximately 917 square feet.

While the proposed ADU has been constructed, City records reflect permits for the construction of the proposed two-story additional DU have not been received for review.

The property is rectangular in shape, flat, and according to the application, contains 0.231 acres, or approximately 10,062 square feet in area. In an R-7.5(A) Single Family District the minimum lot size is 7,500 square feet.

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

- That granting the variance 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 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 zoning classification.

As of April 11, 2022, no letters have been submitted in support of or in opposition to the request.

Ultimately, the two requests are independent, and the board must consider the standards and evidence presented for each request.

If the board were to grant the special exception for an additional dwelling unit to a single-family use and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on this document. Furthermore, if the board were to grant the special exception to allow the ADU, the Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

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

**Timeline:**

- Dec. 10, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 28, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 3, 2022: The Board of Adjustment Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the January 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 11<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."
- January 25, 2022: The applicant submitted evidence (**Attachment A**) for staff consideration.
- January 27, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, Senior Engineer, and the Assistant City Attorney to the board.
- No review comment sheets were submitted in conjunction with this application.
- February 22, 2022: The Board recommended to hold the case under advisement until April 19, 2022.
- March 30, 2022: The representative requested to revise the request to remove the variance request to exceed 25 percent of the floor area ratio of the main structure.

**BOARD OF ADJUSTMENT ACTION:** February 22, 2022

**APPEARING IN FAVOR:** Fred Pena 1134 Mountain Lake Rd. Dallas, TX.

**APPEARING IN OPPOSITION:** None

**MOTION:** Lamb

I move that the Board of Adjustment in request No. BDA 212-013, hold this matter under advisement until April 19, 2022.

**SECONDED:** Halcomb

**AYES:** 5 – Narey, Frankford Lamb, Halcomb, Neumann

**NAYS:** 0 -

**MOTION PASSED:** 5-0 (unanimously)

**BOARD OF ADJUSTMENT ACTION:** April 19, 2022

**APPEARING IN FAVOR:** Fred Pena 1134 Mountain Lake Rd. Dallas, TX

**APPEARING IN OPPOSITION:** None.

**MOTION#1:** Lamb

I move that the Board of Adjustment, in request No. BDA 212-013, on application of Diana Flores represented by Alfredo Pena, **grant** the request to construct and maintain an accessory dwelling unit on a site developed with a single-family structure as a special exception to the single-family use regulations requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring properties.

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; and

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

**SECONDED:** Halcomb

**AYES:** 4 – Lamb, Narey, Frankford, Neumann

**NAYS:** 1- Halcomb

**MOTION PASSED:** 4 – 1

**MOTION#2:** Lamb

I move that the Board of Adjustment, in Appeal No. BDA 212-013, on application of Diana Flores represented by Alfredo Pena, **deny** the variance to the floor area ratio regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Halcomb**

**AYES:** 5 – Lamb, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA212-017(PD)

**BUILDING OFFICIAL'S REPORT:** Application of Joseph F. DePumpo for variances to the side yard setback regulations at 4715 Reiger Avenue. This property is more fully described as a part of Lot 1 in City Block F/799 and is zoned Planned Development District No. 98, a Multiple Family designation, which requires a side yard setback of ten feet. The applicant proposes to maintain the existing multiple-family dwelling and construct and maintain an addition to the multiple-family structure and provide a four-foot side yard setback on the northeast side, which will require a six-foot variance to the side yard setback regulations on the northeast side, and provide an eight-foot-seven-inch setback on the southwest side which will require a one-foot-five-inch variance to the side yard setback regulations on the southwest side.

**LOCATION:** 4715 Reiger Avenue

**APPLICANT:** Joseph F. DePumpo

**REQUESTS:**

A request for a variance to the side yard setback regulations of four feet on the northeast side, and one-foot-five-inch on the southwest side is made to maintain the existing structure and construct and maintain additions to the multiple family structure along both side yard setbacks.

**UPDATES:**

No updates have been provided.

**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:

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

**State Law/HB 1475 effective 9-1-21**

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

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site is unique and different from most lots in this MF-2 Multiple Family District considering its restrictive lot area of 11,950 square feet. The applicant submitted evidence with the submitted application materials (**Attachment A**) comparing lot size and floor area ratios within the same zoning district. Per the comparative analysis, the average lot area is 19,464 square feet and the average floor area of structures being 11,491 square feet. Thus, in analyzing the comparative properties the restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PDD No. 98 Multiple Family
- North: PDD No. 98 Single Family
- South: PDD No. 98 Multiple Family
- East: PDD No. 98 Single Family
- West: PDD No. 98 Multiple Family

### **Land Use:**

The subject site and surrounding properties to the west and south are developed with multiple-family dwelling units while the properties to the north and east are developed with single-family dwellings.

### **Zoning/BDA History:**

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

### **GENERAL FACTS/STAFF ANALYSIS:**

This request focuses on maintaining the existing portion of the structure along the northeast, southeast, and southwest portions of the structure that encroach into the 10-foot side yard setbacks. However, since the Development Code regulates compliance with the most restrictive requirement, the variance will only focus on the northeast and southwest encroachments. The proposed site plan will ensure compliance with the less restrictive portion along the southeast. The request proposes to construct and maintain an addition to an existing covered porch along the southwestern portion of the structure of approximately 96 square feet of floor area and will encroach one-foot-five-inches into the side yard setback along the southwestern portion of the structure.

An addition is proposed of approximately 300 square feet of floor area to the first floor of the existing structure to enclose the existing first floor unenclosed porch and an approximately 426 square feet of floor area to the second floor to align the second story with the façade and footprint of the first story along the southeastern portion of the structure. While additions are proposed along the front façade of the structure, neither the existing structure or additions are proposed to extend beyond the existing footprint or encroach into the required 30-foot front yard setback.

The portions of the structure along the southeastern façade where an encroachment of two-feet-seven-inches already exists is being brought into compliance while the proposed second-story addition proposes to follow the same footprint and encroachment. Additionally, the applicant proposes to provide an addition of approximately 475-square-feet to the first and second story along the rear of the structure and proposes to align the addition with the portion of the façade and roofline currently encroaching into the seven-foot-five-inch side yard setback along the northeastern façade of the structure.

The site is currently developed with a multiple family dwelling unit consisting of three dwelling units, constructed in 1918, according to Dallas County Appraisal District records, and situated along an interior yard and the north line of Reiger Avenue. The additions are proposed to total 1,297 square feet of floor area. The existing structure contains approximately 2,945 square feet. The proposed additions, while not increasing the number of dwellings, will enlarge two of the existing dwelling units and provide a total of 4,242-square feet of floor area.

Structures on lots designated multiple family must have a minimum side yard setback of ten feet. A site plan has been submitted denoting the portions of the existing multiple family

structure and the proposed addition to provide varied setbacks of four-feet along the northeast side, seven-feet-five-inches on the southeast side, and eight-feet-seven-inches on the southwest side.

PDD No. 98 differs from most Planned Development Districts since the district designates uses permitted on individual lots. The subject site is designated an MF-2 Multiple Family District with the regulations prescribed in Chapter 51. An MF-2 District in Chapter 51 regulates minimum lot area/size per bedroom per dwelling unit. The following exists for a MF-2 Multiple Family District in Chapter 51:

- No separate bedroom/efficiency requires a minimum of 800 square feet of lot area,
- One bedroom requires a minimum of 1,000 square feet of floor area,
- Two bedrooms require a minimum of 1,200 square feet of floor area, and
- More than two bedrooms add this amount (150 square feet of floor area) for each bedroom over two.

In accordance with the above floor area ratios, the proposed floor plan containing eight bedrooms within three dwelling units require a minimum of 3,900 square feet of lot area. However, the minimum lot area of 3,900 square feet does not include the minimum lot area for the off-street parking requirements of one space per bedroom and .25 per guest for a total of ten off-street parking spaces with a minimum area of 8-feet x 15-feet for a minimum area of 1,200 square feet of lot area. The minimum lot area of 3,900 square feet plus 1,200 feet lot area for a total lot area of 5,100 square feet of lot area does also not include the minimum requirement for infrastructure which typically constitutes ten percent of the lot area, the setback regulations or landscape requirements for the site which can further reduce the lot area or buildable area.

The subject site is not irregular in shape and contains approximately 11,950 square feet of lot area and 2,945 square feet of floor area. The applicant submitted evidence with the submitted application materials (**Attachment A**) comparing lot size and floor area ratios within the same zoning district. Per the comparative analysis, the average lot area is 19,464 square feet and the average floor area of structures is 11,491 square feet. Thus, in analyzing the comparative properties the restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

Additionally, PDD No. 98 Sec. 51P-98.105(3) establishes that existing residential structures may not be remodeled or replaced so as to exceed the existing number of dwellings in each existing structure. Any multiple-family or duplex structure that is remodeled for a lesser number of units will thereafter be limited to the more restrictive number of units.

Thus, staff concludes that the subject site is unique and different from most lots in this MF-2 Multiple Family designation within PDD No. 98 considering its restrictive lot area and restrictive floor area which neither can be increased through enlarging the number of dwellings on the lot which restricts the site from being developed in a manner commensurate with development upon other parcels of land with the same zoning.

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 MF-2 Multiple Family zoning classification/designation.
- 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 MF-2 Multiple Family zoning classification/designation.

Additionally, the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

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

As of April 11, 2022, five letters have been submitted in opposition of the request and none in support of the request.

If the board were to grant these side yard setback variance requests and impose the submitted site plan as a condition, development would be limited to what is shown on this document. Granting these variance requests will not provide any relief to the Dallas Development Code regulations.

### **Timeline:**

January 3, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. Additionally, the applicant submitted evidence (**Attachment A**) with the application.



January 23, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 3, 2022: The Board of Adjustment Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the February 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 4<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 2, 2022: 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 following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board.

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

March 22, 2022: The Board held the request under advisement until April 19, 2022.

April 11, 2022: No updates have been provided.

BOARD OF ADJUSTMENT ACTION: March 22, 2022

APPEARING IN FAVOR: Joseph DePumpo 4715 Reiger Ave. Dallas, TX.

APPEARING IN OPPOSITION: Leah Kagan 4728 Victor St. Dallas, TX.  
Jim Anderson 4706 Swiss Ave. Dallas, TX.

MOTION: Lamb

I move that the Board of Adjustment in request No. BDA 212-017, hold this matter under advisement until April 19, 2022.

SECONDED: Halcomb

AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: April 19, 2022**

APPEARING IN FAVOR: Joseph DePumpo 927 Turnberry Ln. Southlake, TX.

APPEARING IN OPPOSITION: Jim Anderson 4706 Swiss Ave. Dallas, TX.

MOTION: Lamb

I move that the Board of Adjustment in request No. BDA 212-017, **hold** this matter under advisement until **May 17, 2022**.

SECONDED: Halcomb

AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

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**FILE NUMBER:** BDA212-019(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Mark Drumm represented by Nate Parrott of KFM Engineering and Design for a special exception to the landscape regulations at 536 W. 9<sup>th</sup> Street. This property is more fully described as Part of Lots 18, 19, and 20, in City Block 35/3155, and is zoned (Subdistrict 3) within Planned Development District No. 830, which requires mandatory landscaping. The applicant proposes to construct a multifamily structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 536 W. 9<sup>th</sup> Street

**APPLICANT:** Mark Drumm represented by Nate Parrott of KFM Engineering and Design

**REQUEST:**

A request for a special exception to the landscape regulations is made to demolish the existing structure and construct a 9,779-square-foot retail structure that will not meet the landscape regulations or, more specifically, will not provide the required street buffer zone along the street frontage due to an existing underground 12-inch water utility and overhead electrical lines along the property boundary which prohibit planting in the right-of-way and within ten feet of the utility line.

**UPDATES:**

On March 31, 2022, the representative provided an alternate landscape plan to the Chief Arborist to which comments were provided via the Arborist report (**Attachment A**).

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

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property.
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the board shall consider the following factors:

- the extent to which there is residential adjacency.
- the topography of the site.
- the extent to which landscaping exists for which no credit is given under this article.
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION:**

The City of Dallas chief arborist submitted a memo regarding the applicant's request and recommending approval (**Attachment C**).

Rationale:

- The chief arborist recommends approval of the proposed revised alternate landscape plan. While the landscape plan has several deficiencies, these deficiencies are based primarily on building proximity to the street right-of-way and the amount of lot coverage relative to open space, all allowed by city zoning regulations. The conditions of PDD No. 830 made supportive conditions to allow 1) site trees to be planted in the right-of-way, and 2) for street trees to be minimized to small trees due to reduced planting spaces as well as the location of public utilities. Thus, staff believes that strict compliance with the landscaping regulations in Article X unreasonably burdens this use of this property under this design.

**BACKGROUND INFORMATION:**

**Zoning**

Site: Subdistrict 3 within PDD No. 830

Northwest: Subdistrict 8 within PDD No. 830

North: Subdistrict 3 within PDD No. 830

East: Subdistrict 3 within PDD No. 830  
South: Subdistrict 3 within PDD No. 830  
West: Subdistrict 8 within PDD No. 830

**Land Use:**

The subject sites are developed with single family dwelling units. Surrounding properties to the northwest and west are developed with single-family dwelling units while the properties immediately adjacent to the south and east are developed with multifamily dwelling units. The property immediately adjacent to the north across, W. 9<sup>th</sup> Street is developed with a public school [Bishop Arts Academy].

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

The request for a special exception to the landscape regulations is made to raze the existing single-family dwelling units and construct a multifamily structure that will not meet the minimum landscape requirements.

The subject site consists of three parcels (Lots 18, 19, and 20). at the intersection of N. Llewellyn Avenue and W. 9<sup>th</sup> Street. The first parcel (Pt Lots 19 & 20) is developed with two one-story, single family dwelling units consisting of approximately 1,057 square feet and 1,252 square feet, respectively, and constructed in 1945, according to Dallas County Appraisal District records. The second parcel (Lot 19) is developed with a one-story, dilapidated, single-family dwelling unit and detached garage consisting of approximately 1,806 square feet, constructed in 1945. The third and last parcel (Lot 18) is developed with a one-story, single family dwelling units and a detached garage consisting of approximately 1,638 square feet and constructed in 1945.

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

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

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

The applicant is seeking a special exception to the landscaping requirements of Article X. The property is in the PDD No. 830 Subdistrict 3 which contains additional requirements for street trees.

**The chief arborist’s memo states the following with regard to “provision”:**

The proposed landscape plan provides a narrow strip of landscaping on the property at the edge of the building foundation on both street fronts and two enclosed areas facing 9<sup>th</sup> Street.

- Street buffer zone: Meets Article X urban streetscape (street buffer zone) requirements on 9<sup>th</sup> Street, but not on Llewellyn Street.
- Street trees are provided with two small trees for a required one large tree, as allowed by PDD No. 830. All street trees are small trees.
- The requirement for site trees is met on the parkway, as allowed by PDD No. 830.

**The chief arborist’s memo states the following with regard to “deficiencies”:**

- The plan does not provide for the Article X urban streetscape conditions along Llewellyn Street. Requirements include a minimum six-foot wide planting area and one design option.
- The property requires 15 landscape design option points (Sec. 10.126). Although the designer presented elements of landscape design options, including the benches in the enclosed seating areas, the parkway conditions are limiting to meeting the ability to attain the required number of points for a lot of this size.

**The chief arborist’s revised memo states the following with regard to the “recommendation”:**

The chief arborist recommends approval of the proposed revised alternate landscape plan as presented on March 30. The landscape plan has several deficiencies based primarily on building proximity to the street right-of-way and due to the amount of lot coverage relative to open space, all allowed by city zoning regulations. The conditions of PD 830 supported the allowance for 1) site trees to be planted in the right-of-way, and 2) for street trees to be minimized to small trees due to reduced planting spaces as well as the location of public utilities. I believe that strict compliance with the landscaping regulations in Article X unreasonably burdens this use of this property under the approved structural design.

As of April 11, 2022, one letter has been submitted in opposition of the request while none have been submitted in support of the request.

If the board were to grant this request and impose the submitted alternate revised landscape plan as a condition to the request, the site would be provided an exception from compliance with minimum landscape requirements for the street buffer zone requirements.

**Timeline:**

January 6, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

January 23, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 3, 2022: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the February 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 4<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 2, 2022: 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 following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board.

March 3, 2022: The Development Services Chief Arborist submitted a report detailing the recommendation (**Attachment A**) based on a revised landscape plan.

March 22, 2022: The Board held the request under advisement until April 19, 2022.

March 30, 2022: The representative submitted a revised landscape plan for consideration (**Attachment B**).

March 31, 2022: The Development Services Chief Arborist submitted a revised report detailing the recommendation based on a revised landscape plan (**Attachment C**).

BOARD OF ADJUSTMENT ACTION: March 22, 2022

APPEARING IN FAVOR: Nate Parrott 4005 Pecan Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment in request No. BDA 212-019, hold this matter under advisement until April 19, 2022.

SECONDED: Halcomb

AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: April 19, 2022**

APPEARING IN FAVOR: Nate Parrott 4005 Pecan Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 212-019, on application of Mark Drumm represented by Nate Parrott, **grant** the request of this applicant for a special exception to the landscape requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property and testimony shows that (1) strict compliance with the requirements of this article will unreasonably burden the use of the property; (2) the special exception will not adversely affect neighboring properties, and (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

Compliance with the submitted alternate revised landscape plan is required.

SECONDED: Narey

AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

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**FILE NUMBER:** BDA212-020(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Stephen Marley represented by Alfred Pena for 1) a variance to the side yard setback regulations of five-feet to construct an accessory structure zero feet from the property line, within a required five-foot side yard setback; and, 2) a variance to the single-family use regulations to construct and maintain a 798-square-foot accessory structure (39.54 percent of the 2,018-square-foot floor area of the main structure)

which will require a 294-square-foot variance to the floor area ratio of the main structure at 1218 N. Clinton Avenue. This property is more fully described as Lot 5 in City Block 15/3802 and is zoned Subarea 1 within Conservation District No. 13, in which a minimum side yard setback of five feet must be maintained, and an accessory structure may not exceed 25 percent of the floor area of the main structure.

**LOCATION:** 1218 N. Clinton Avenue

**APPLICANT:** Stephen Marley represented by Alfred Pena

**REQUESTS:**

The applicant proposes to construct and maintain an accessory structure with approximately 798 square feet of floor area wholly into a required five-foot side yard setback on a site developed with a single-family dwelling.

**UPDATES:**

There have been no updates to the request. However, on April 8, 2022, the applicant requested a postponement (**Attachment B**).

**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:

- (G) 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;
- (H) 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
- (I) 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 (first & second requests):**

Denial:

Rationale:

Staff concluded that the subject site is not unique and different from most lots in Subarea 1 within Conservation District No. 13 considering the evidence (**Attachment A**) neither meets the variance standard by comparing the parcels of land nor proved how the subject land is 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. While the evidence (**Attachment A**) reflected a comparative analysis of twelve properties, the analysis focused on year built, floor area of structures, floor area of variances submitted, average percentage of these variances, average floor area allowed by these variances, and the floor area of existing quarters for five of the comparative properties. Additionally, the evidence (**Attachment A**) provides an overview of how the regulations for the zoning district restrict development on the subject site yet fails to address that the same twelve properties contain the same zoning and regulations that are not prohibitive. All things considered; the evidence (**Attachment A**) does not provide a substantive comparative analysis of the land(s) to meet the variance standard and reflect how the site cannot be developed in a commensurate manner. Subsequently, a cost analysis reflecting how compliance of CD No. 13 regulations would exceed 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor would have received a more favorable recommendation.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: Subarea 1 within Conservation District No. 13  
North: Subarea 1 within Conservation District No. 13  
South: Subarea 1 within Conservation District No. 13  
East: Subarea 1 within Conservation District No. 13  
West: Subarea 1 within Conservation District No. 13

#### **Land Use:**

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

#### **Zoning/BDA History:**

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

1. **BDA201-082:** On September 20, 2021, Panel C, Board of Adjustment approved  
1) a variance to the side yard setback regulations of four-feet to construct an accessory dwelling unit one-foot from the property line, within a required five-foot side yard setback; and 2) a variance to the single-family use regulations to construct and maintain a 699-square-foot accessory structure (34.8 percent of the 2,005-square-foot floor area of the main structure) at 1107 S. Canterbury.
2. **BDA189-040:** On April 16, 2019, Panel A, Board of Adjustment denied a variance for to the off-street parking regulations of 15' is made to replace an existing approximately 360 square foot garage with parking spaces in it that are accessed from N. Edgefield Avenue to the east with a new approximately 650 square foot garage with parking spaces in it that would be accessed from the alley to the west – parking spaces in this new enclosed structure/garage that would be located 5' from the right-of-way line adjacent to the alley or 15' into the 20' required distance these enclosed parking spaces must be from the alley right-of-way line on a site developed with a single family home at 1107 N. Edgefield Avenue.
3. **BDA189-052:** On May 21, 2019, Panel A, Board of Adjustment approved a

variance to the front yard setback regulations to provide a 21-foot front yard setback, which will require a 51-foot variance to the front yard setback at 1828 Kessler Parkway.

4. **BDA178-033:** On March 21, 2018, Panel B, Board of Adjustment approved a variance to the front yard setback regulations of 19' is requested to construct and maintain the aforementioned structure 16' from the front property line or 19' into the required 35' front yard setback; 2. a variance to the off-street parking regulations of 4' is requested as the proposed home would have parking spaces in an enclosed structure (an attached garage) that would be located 16' from the right-of-way line adjacent to the street or as much as 4' into the required 20' distance from the right-of-way line adjacent to Kessler Parkway at 2016 Kessler Parkway.
5. **BDA178-030:** On March 19, 2018, Panel C, Board of Adjustments approved a variance to the front yard of setback 11-foot-3-inch variance to the front yard setback regulations to provide a 20 foot three inch front yard setback at 1520 Olympia Drive.

### **GENERAL FACTS/STAFF ANALYSIS:**

The subject property zoned Subarea 1 within Conservation District No. 13. In this district, a minimum side yard setback of five feet is required. Additionally, an accessory structure cannot exceed 25 percent of the floor area ratio of the main structure. The requests for variances to the side yard setback and maximum floor area ratio regulations focus on constructing and maintaining a 798-square-foot accessory structure. The proposed unit is 39.54 percent of the 2,018 square foot floor area of the main structure, which will require a 294-square-foot variance to the floor area ratio of the main structure. The proposed unit is to be constructed wholly within the required five-foot side property line, or five feet into a required five-foot side yard setback.

DCAD records indicate the following improvements for the property located at 1218 N. Clinton Avenue: "main improvement": a structure with 2,018 square feet of living area built-in 1924" and "additional improvements": a 400-square-foot detached garage, a 232 square foot "detached quarters," and a swimming pool.

The site plan depicts an existing one-story accessory structure with approximately 287 square feet of floor area. The applicant proposes to construct a second story accessory structure with approximately 798 square feet, with the proposed second story addition encroaching wholly into a required five-foot side yard setback. The second story addition with stairs will equate to approximately 39.5 percent of the existing 2,018-square-foot floor area ratio of the main structure.

The property is irregular in shape since it is neither rectangular nor square and according to the application, contains 0.248 acres, or approximately 10,802 square feet in lot area. In Subarea 1 within Conservation District No. 13 the minimum lot size is 7,500 square feet. However, properties within the vicinity are one-and-a half times greater than the minimum lot size.

The applicant has submitted a document comparing the lot sizes and improvements of the subject site with 12 adjacent properties in the same zoning district. However, information contained within the evidence did not provide a comparative analysis of lot area, shape, or slope. Thus, staff cannot determine whether the subject property is restrictive in a manner to prevent commensurate development.

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

- That granting the variances 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 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 zoning classification.
- The variances 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 zoning classification.

As of April 11, 2022, staff has received eight letters in support of the request and none in opposition to the request.

If the board were to grant a variance to the floor area regulations and a variance to the side yard setback for structures accessory to single-family uses and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on this document. However, granting these variances will not provide any relief to the Dallas Development Code regulations other than allowing an additional structure on the site to exceed the floor area ratio and encroach into the side yard setback as depicted on the site plan (i.e. development on the site must meet all other code requirements).

**Timeline:**

- January 7, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. Additionally, the applicant submitted evidence (**Attachment A**) with the application.
- March 1, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 3, 2022: The Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the February 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 4<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 2, 2022: 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 following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board.

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

March 22, 2022: The Board held the request under advisement until April 19, 2022.

April 8, 2022: The applicant requested a postponement (**Attachment B**) to allow more time to garner support from neighbors.

**BOARD OF ADJUSTMENT ACTION:** March 22, 2022

**APPEARING IN FAVOR:** Alfredo Pena 410 E. 5<sup>th</sup> St. Dallas, TX  
 Stephen Marley 1218 N. Clinton Ave. Dallas, TX  
 Jason Michael 1300 W. Canterbury Dallas TX

**APPEARING IN OPPOSITION:** None.

**MOTION:** Halcomb

I move that the Board of Adjustment in request No. BDA 212-020, hold this matter under advisement until April 19, 2022.

**SECONDED:** Frankford

**AYES:** 5 – Narey, Frankford Lamb, Halcomb, Neumann

**NAYS:** 0 -

**MOTION PASSED:** 5-0 (unanimously)

**BOARD OF ADJUSTMENT ACTION:** April 19, 2022

**APPEARING IN FAVOR:** Stephen Marley 1218 N. Clinton Ave. Dallas, TX  
 Jason Michael 1300 W. Canterbury Dallas TX

**APPEARING IN OPPOSITION:** None.

**MOTION:** Lamb

I move that the Board of Adjustment in request No. BDA 212-020, **hold** this matter under advisement until **May 17, 2022**.

**SECONDED:** Halcomb

**AYES:** 5 – Narey, Frankford Lamb, Halcomb, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

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FILE NUMBER: BDA212-026(PD)

**BUILDING OFFICIAL'S REPORT:** Application of Victor Morales for a special exception to the fence standards regulations and a special exception to the visibility obstruction regulations at 2603 Hondo Avenue. This property is more fully described as Lot 25, in City Block 7/2256, and zoned an MF-2 Multiple Family Subdistrict in Planned Development District No. 193, which limits the height of a fence in the front yard to four feet and requires a 20-foot visibility triangle at an alley and driveway approach. The applicant proposes to construct a fence six-foot-tall fence located within a visibility obstruction triangle which will require special exceptions to the fence regulations and the visibility obstruction regulations, respectively.

**LOCATION:** 2603 Hondo Avenue

**APPLICANT:** Victor Morales

**REQUEST:**

The applicant proposes to maintain a six-foot-tall wrought iron fence with a six-foot-tall sliding gate along the front lot line, within a required visibility obstruction triangle at Hondo Avenue.

**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.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

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

## **STAFF RECOMMENDATION:**

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

The Transportation Development Services Senior Engineer has reviewed the request for a special exception to the visual obstructions regulation and does not have objections to the proposed request (**Attachment A**).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: MF-2 Multiple Family Subdistrict in Planned Development District No. 193  
North: MF-2 Multiple Family Subdistrict in Planned Development District No. 193  
East: MF-2 Multiple Family Subdistrict in Planned Development District No. 193  
South: MF-2 Multiple Family Subdistrict in Planned Development District No. 193  
West: MF-2 Multiple Family Subdistrict in Planned Development District No. 193

### **Land Use:**

The subject site is developed with a single-family dwelling unit. Surrounding properties are developed with multiple-family structures to the north and south, an undeveloped parcel to the east, and a single-family use to the west.

### **Zoning/BDA History:**

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

## **GENERAL FACTS/STAFF ANALYSIS:**

The applicant proposes to maintain a six-foot-tall wrought iron fence along the front lot line. The fence is proposed to extend at a depth of 30 feet along the side yard setback, within a required visibility obstruction triangle at the private drive approach along Hondo Avenue. The property is zoned and a MF-2 Multiple Family Subdistrict in Planned Development District No. 193 and is developed with a single-family home.

Section 51P-193.126(f)(5) states that front yard privacy fencing in an MF-2 Subdistrict may contain an average height of seven feet and a maximum height of nine feet above the top of the nearest street curb and may be located in the required front yard if: (A) the main building does not exceed 36 feet in height; (B) there are no front street curb cuts, front yard driveways, or front entryways to garages or parking; (C) a minimum setback of 12 feet is provided between the fence and the projected street curb; **and** (D) all portions of the fence exceeding four feet in height are set back at least two feet from the lot line.

Additionally, Section 51A-4.602(d) of the Dallas Development Code states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and alleys); and between two-and-a-half and eight feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The following information is shown on the submitted site plan:

- The proposed fence is located in the front yard along Hondo Avenue and is approximately six-feet-six-inches from the back of curb line.
- The length of the proposed fence in the front yard along Hondo Avenue is approximately 50 feet perpendicular to the frontage.
- The fence is proposed to be constructed of wrought iron with a 15-foot-wide sliding wrought iron gate.
- The visual obstruction is proposed to encroach 10-feet into the visibility triangle at the private drive approach along Hondo Avenue.

Staff conducted a field visit of the site and surrounding area and noticed no other fences appear to be constructed above the minimum height of four feet within the front yard setback and/or obstruct the required 20-foot visibility triangle at the drive approach.

The applicant has the burden of proof for both, the special exception to the fence regulations and a special exception to construct the fence in a required visibility obstruction triangle, since the basis for these types of appeals are in the opinion of the board:

- Visibility obstructions items are made on the basis of the item(s) not constituting a traffic hazard, and
- Technical opinions provided from the city engineer.

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

- Ten feet into the required 20-foot visibility triangle at the frontage along Hondo Avenue.

The Transportation Development Services Senior Engineer does not have objections to the request for a special exception to construct a fence in a required visibility obstruction triangle (**Attachment A**).

As of April 11, 2022 no letters have been submitted in support of or opposition to this request.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the height of the fence and location within the 20-foot visibility triangle at the private drive approach adjacent to Hondo Avenue, as shown on the plans.

However, it should be noted that on April 12, 2022, the Development Services Senior Plans Examiner/Development Code Specialist issued a revised BO Report (**Attachment B**) removing the fence requirement due to the discovery of an exception in Sec.51P-193.126(j) regarding single-family uses in MF-2 subdistricts: (2) Fences in front yards and corner side yards may not

exceed six feet-in-height if the fence is a minimum of 50 percent open. Since the applicant is proposing a six-foot-high, wrought iron, open fence, and the property will maintain the single-family use, the special exception for the fence height is not necessary.

### **Timeline:**

Feb. 22, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 8, 2022: The Board Senior Planner emailed the 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 March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 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 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner/Development Code Specialist, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

March 31, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet (**Attachment A**).

April 12, 2022: The Development Services Senior Plans Examiner/Development Code Specialist issued a revised BO Report removing the fence requirement due to the discovery of an exception for single-family uses in MF-2 Subdistricts in PD No. 193 (**Attachment B**).



**BOARD OF ADJUSTMENT ACTION: April 19, 2022**

**APPEARING IN FAVOR:** Victor Morales 2603 Hondo Ave. Dallas, TX.

**APPEARING IN OPPOSITION:** None.

**MOTION#1: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 212-026, on application of Victor Morales, **grant** the request of this applicant to construct and/or maintain a six-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

**SECONDED: Halcomb**

**AYES:** 5 – Narey, Frankford Lamb, Halcomb, Neumann

**NAYS:** 0 -

**MOTION PASSED: 5-0 (unanimously)**

**MOTION#2: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 212-026, on application of Victor Morales, **grant** the request to maintain items in the visibility triangle at the drive approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

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

Compliance with the submitted site plan and elevation is required.

**SECONDED: Halcomb**

**AYES:** 5 – Narey, Frankford Lamb, Halcomb, Neumann

**NAYS:** 0 -

**MOTION PASSED: 5-0 (unanimously)**

**MOTION#3 (Subsequent Decision): Halcomb**

I move that the Board of Adjustment, in Appeal No. BDA 212-026, on application of Victor Maroals, **grant** the request to waive the filing fees to be paid in association with a request for a special exception to the fence standard regulations and special exceptions to the visibility obstruction regulations as requested by this applicant because our evaluation of the property and testimony shows that the payment of the fee would result in substantial financial hardship to this applicant.

**SECONDED: Lamb**

**AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann**

**NAYS: 0 -**

**MOTION PASSED: 5-0 (unanimously)**

\*\*\*\*\*

**FILE NUMBER:** BDA212-027(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Rob Baldwin for a special exception to the fence height regulations at 1822 W. 10<sup>th</sup> Street. This property is more fully described as Lots 10-20 and abandoned alley, Block 29/3447, and is zoned an R-7.5(A) Single Family District, which limits the height of a fence in the front yard to four feet.

**LOCATION:** 1822 W. 10th Street

**APPLICANT:** Rob Baldwin, Baldwin and Associates

**REQUEST:**

The applicant proposes to construct a six-foot six-inch-high fence in a required front yard, which will require a two-foot six-inch special exception to the fence regulations.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

**Site:** R-7.5(A) Single Family District w/SUP No. 2368 for a child-care facility and private school use

**North:** NS(A) Neighborhood Service District

**East:** R-7.5(A) Single Family District

**South:** R-7.5(A) Single Family District

**West:** Planned Development District No. 996 and R-7.5(A) Single Family District

### **Land Use:**

The subject site is being renovated and will maintain the private school use currently authorized under the SUP at the site. Surrounding properties are developed with single-family uses to the north.

### **Zoning/BDA History:**

There have not been any recent related board or zoning cases recorded either on or near the subject site.

### **GENERAL FACTS /STAFF ANALYSIS:**

The subject site is zoned an R-7.5(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct a six-foot six-inch-high fence in a required front yard, which will require a two-foot six-inch special exception to the fence regulations. The property is being renovated to maintain a private school use.

The site and elevation plans submitted with the request depict the six-foot-high wrought iron fence with capped brick columns extending an additional six-inches as the following:

- Protruding perpendicular to W. 10<sup>th</sup> Street at the northeastern edge of the building 25 feet to the front property line.
- Travelling east the remaining length of the property and following the property line while maintaining the 45-foot visibility triangle at W. 10<sup>th</sup> Street and S. Waverly Drive.
- Travelling southbound along the S. Waverly Drive property line about 175 feet.
- Turning westward 25 feet through the front yard setback before entering the interior property.
- Entering the front yard setback along S. Brighton Avenue and then turning northbound, perpendicular to W. 10<sup>th</sup> Street at the southwestern edge of the building before terminating.

According to DCAD records, the existing institutional structure contains 4,985 square feet and was constructed in 1975.

Staff conducted a field visit of the site and surrounding area and did not notice other fences that seemed taller than four feet-in-height or solid in nature located in obvious front yards. However, it should be noted that the majority of the proposed fence would front along S. Waverly Drive, meeting the view of a fence taller than four-feet-in-height. No recent case history was identified.

The applicant has the burden of proof in establishing that the two-foot six-inch special exception to the fence height regulation will not adversely affect neighboring properties.

As of April 12, 2022, no letters had been received regarding the request.

**BOARD OF ADJUSTMENT ACTION: April 19, 2022**

**APPEARING IN FAVOR:** Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

**APPEARING IN OPPOSITION:** None.

**MOTION: Narey**

I move that the Board of Adjustment, in Appeal No. BDA 212-027, on application of Rob Baldwin, **grant** the request of this applicant to construct and/or maintain a six-foot six-inch high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

**SECONDED: Lamb**

**AYES:** 5 – Lamb, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0-

**MOTION PASSED:** 5-0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA212-031(JM)

**BUILDING OFFICIAL'S REPORT:** Application of German G. Sierra for a variance to the parking regulations at 1805 S. Edgefield Avenue. This property is more fully described as Lots 14,15,16, and Pt of Lots 17,18, Block 2/4742, and is zoned a CR Community Retail District, which requires parking to be provided.

**LOCATION:** 1805 S. Edgefield Avenue

**APPLICANT:** German G. Sierra

**REQUESTS:** The applicant proposes to maintain a nonresidential structure for a restaurant without drive-in or drive-through service use, and provide three of the required 18 parking spaces, which will require a 15-space variance (83.33 percent reduction) to the 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:

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

**State Law/HB 1475 effective 9-1-21**

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

**STAFF RECOMMENDATION: ENGINEER OPINION**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The Transportation Development Services Senior Engineer reviewed the submitted evidence (**Attachment A**) and found no objection to the variance request (**Attachment B**).

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

The subject site is being redeveloped with a restaurant without drive-in or drive-through service use (coffee shop). All surrounding properties are developed with single-family uses.

### **Zoning/BDA History:**

1. Z178-142: an authorized hearing to determine proper zoning on this site and adjacent CR District properties in Elmwood. No action taken.

## **GENERAL FACTS/STAFF ANALYSIS**

The subject site is zoned CR Community Retail District, where the typical lot size varies significantly. Per DCAD records, the property is 6,680 square feet in size with a 1,235-square-foot structure erected in 1948, and a 400-square-foot detached accessory structure. The property is located at the southwest corner of Tennessee Avenue and South Edgefield Avenue. The applicant is seeking to maintain these structures to house a coffee shop. The coffee shop is considered a restaurant use and requires parking at a ratio of one space per 100 square feet of floor area.

According to the site plan submitted with the request, the detached accessory structure contains 446 square feet. Combined with the main structure of 1,235 square feet, the total restaurant area is considered 1,681 square feet and requires a minimum of 17 parking spaces. The applicant states that due to the residential configuration and size of the lot, the property cannot be used in a manner commensurate to other properties with the same CR District zoning (**Attachment A**), some found within the same Elmwood area.

The applicant's evidence includes supportive passages from a pending neighborhood plan WOCAP the West Oak Cliff Area Plan, as well.

Ultimately, the Transportation Development Services Senior Engineer reviewed the submitted evidence and found no objection to the variance request (**Attachment B**).

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

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

The board may also consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- (f) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
- (g) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
- (h) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (i) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (j) the municipality consider the structure to be a nonconforming structure.

As of April 12, 2022, staff had received four letters of support and none in opposition.

If the board were to grant the variance request and impose the submitted site plan as a condition, the proposed parking would be limited to what is shown on this document. No additional relief is provided with this request.

**TIMELINE:**

- February 2, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
  
- March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 15, 2022: 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 March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 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 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board

March 21 & 30, 2022: The applicant submitted additional evidence for consideration (**Attachment A**).

March 31, 2022: The Transportation Development Services Senior Engineer submitted a comment sheet (**Attachment B**).

**BOARD OF ADJUSTMENT ACTION: April 19, 2022**

APPEARING IN FAVOR: German Sierra 1805 S. Edgefield Ave. Dallas, TX

APPEARING IN OPPOSITION: None

**MOTION: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 212-031, **hold** this matter under advisement until **June 21, 2022**.

**SECONDED: Narey**  
**AYES: 5 – Lamb, Halcomb, Narey, Frankford, Neumann**  
**NAYS: 0-**

**MOTION PASSED: 5-0 (unanimously)**



\*\*\*\*\*

**FILE NUMBER:** BDA212-034(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Rob Baldwin of Baldwin Associates for **1)** a special exception to the fence height regulations of four feet is made to construct and maintain a seven-foot-high fence; **2)** a special exception is made to the fence standards regulations to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet front the front lot line; and, **3)** a special exception are made to the visual obstruction regulations to construct and maintain portions of a seven-foot-high solid masonry, limestone, or stone gate in a required 20-foot visibility triangle along Sunnybrook Lane. This property is more fully described as a Lot 9A in City Block 13-A/5586 and zoned an R-1ac(A) Single Family District, which limits the height of a fence in a required front yard to four feet, prohibits a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, and requires a 20-foot visibility triangle at the drive approach onto Sunnybrook Lane. The applicant proposes to maintain a single-family dwelling with a residential fence height of seven feet in a required front yard setback with fence panels having less than 50 percent open surface area located less than five feet from the front lot line, with portions of the solid wood fence in the required 20-foot visibility triangle at the drive approach onto Sunnybrook Lane, which will require four special exceptions.

**LOCATION:** 9207 Sunnybrook Lane

**APPLICANT:** Rob Baldwin of Baldwin Associates

**REQUEST:**

The property is currently developed with an approximately 9,067-square-foot two-story single-family dwelling with an attached garage, an approximately 1,471-square-foot accessory structure (detached quarters), and an in-ground pool.

**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.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

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

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the 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 nor constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board’s decision-making.

The Transportation Senior Engineer has no objections to the proposed requests to encroach into the required 20-foot visibility triangles at the drive approach into the property from Sunnybrook Lane (**Attachment A**).

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:** There have been seven board cases in the general vicinity within the last five years.

1. BDA201-069: On August 17, 2021, Panel A, Board of Adjustment granted a request for a special exception to the fence height regulations at 4906 Park Lane.
2. BDA190-117: On January 19, 2021, Panel A, Board of Adjustment granted a request for a special exception to the fence height regulations at 4923 Deloach
3. BDA190-109: On November 16, 2021, Panel C, Board of Adjustment granted a request for a special exception to the fence height regulations at 4416 Manning Lane.
4. BDA190-074: On August 18, 2020, Panel A, Board of Adjustment granted a request for a special exception to the fence height regulations at 4211 Brookview Drive.
5. BDA189-063: On May 22, 2019, Panel B, Board of Adjustment granted a request for a special exception to the fence standards regulations at 9727 Audubon Place.

6. BDA189-019: On March 18, 2019, Panel C, Board of Adjustment granted requests a special exception to the fence height regulations, a special exception to the fence standards regulations, and a special exception to the fence standards regulation at 5014 Lakehill Court.
7. BDA178-142: On December 10, 2018, Panel C, Board of Adjustment granted a request for a special exception to the fence standards regulations at 5020 Park Lane.

**GENERAL FACTS/STAFF ANALYSIS:**

The property is currently developed with an approximately 9,067-square-foot two-story single-family dwelling with an attached garage, an approximately 1,471-square-foot accessory structure (detached quarters), and an in-ground pool. The applicant proposes to construct a seven-foot-high fence in a required front yard with fence panels having less than 50 percent open surface area located less than five feet front the front lot line with portions of the proposed seven-foot-high solid masonry, limestone, or stone gate in a required 20-foot visibility triangle along Sunnybrook Lane.

The requests for special exceptions to the fence standards regulations related to height, opacity, and the visual obstruction focus on constructing and maintaining:

- a seven-foot-high solid masonry fence located in a front yard setback;
- as close as the property line along Sunnybrook Lane; and,
- with one electric stone gate in a 20-foot visibility triangle at the drive approach onto Sunnybrook Lane.

The subject site is zoned an R-1ac(A) Single Family District and requires a minimum front yard setback of 40 feet.

Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. As noted, the proposed fence would be within the required 40-foot front yard setbacks.

Additionally, Section 51A-4.602(a)(3) of the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.

Finally, Section 51A-4.602(d) of the Dallas Development Code states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangle at the drive approaches and alleys on properties zoned single family); and

- between two-and-a-half and eight-feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The following information is shown on the submitted site plan and elevation:

- The proposed fence and gate are located at the lot line along Sunnybrook Lane and located on the property lot line.
- Along Sunnybrook Lane the fence is proposed at a width of approximately 213.46 feet.
- The fence is proposed to be constructed of solid masonry limestone while a light-colored stone is proposed to be constructed for the gate.

As of April 11, 2022, staff has received no letters in support of or in opposition to the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height, openness, and visual obstruction regulations will not adversely affect neighboring property nor constitute a traffic hazard.

Granting the special exceptions to the fence standards related to the height would require the proposal exceeding four feet-in-height in the front yard setback with fence panels having less than 50 percent openness and located along Sunnybrook Lane within a visibility triangle to be maintained in the locations, heights and materials as shown on the site plan and elevation.

**Timeline:**

February 11, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 8, 2022: The Board Senior Planner emailed the 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 March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 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 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

March 31, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet (**Attachment A**).

**BOARD OF ADJUSTMENT ACTION: April 19, 2022**

**APPEARING IN FAVOR:** Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

**APPEARING IN OPPOSITION:** None.

**MOTION#1: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 212-034, on application of Rob Baldwin, **grant** the request of this applicant to construct and/or maintain a seven-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 condition be imposed to further the purpose and intent of the Dallas Development Code:

Compliance with the submitted site plan and elevation is required.

**SECONDED: Halcomb**

**AYES:** 5 – Lamb, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0-

**MOTION PASSED:** 5-0 (unanimously)

**MOTION#2: Narey**

I move that the Board of Adjustment, in Appeal No. BDA 212-034, on application of Rob Baldwin, **deny** the special exception 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: Lamb**

**AYES:** 5 – Lamb, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0-

MOTION PASSED: 5-0 (unanimously)

MOTION#3: Narey

I move that the Board of Adjustment, in Appeal No. BDA 212-034, on application of Rob Baldwin, **grant** the request to maintain items in the visibility triangle at the drive approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Lamb

AYES: 5 – Lamb, Halcomb, Narey, Frankford, Neumann

NAYS: 0-

MOTION PASSED: 5-0 (unanimously)

\*\*\*\*\*

MOTION: Halcomb

I move to adjourn the Panel A hearing

SECONDED: Lamb

AYES: 5 - Lamb, Halcomb, Narey, Frankford, Neumann

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

Recess- 12:09 p.m.

Resume- 12:15 p.m.


Recess (Lunch)- 12:40 p.m.


Resume- 1:15 p.m.


Recess- 2:41 p.m.

Resume- 2:50 p.m.

**4:47 P.M.** Board Meeting adjourned for **April 19, 2022**

  
 \_\_\_\_\_  
 CHAIRPERSON 5-17-22

  
 \_\_\_\_\_  
 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.