

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE/COUNCIL CHAMBERS
TUESDAY, MAY 17, 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., Pamela Daniel, Senior Planner, LaTonia Jackson, Board Secretary, Sarah May, Chief Planner, Jason Pool, Sign Code Specialist, Andreea Udrea, Assistant Director.

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., Pamela Daniel, Senior Planner, LaTonia Jackson, Board Secretary, Sarah May, Chief Planner, Jason Pool, Sign Code Specialist, Andreea Udrea, Assistant Director.

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 17, 2022** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the March 22, 2022 Board of Adjustment Panel A Public Hearing Minutes

BOARD OF ADJUSTMENT ACTION: May 17, 2022

MOTION: Lamb

Approval of the March 22, 2022 Board of Adjustment Panel A Public Hearing Minutes

SECONDED: Frankford

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Approval of the April 19, 2022 Board of Adjustment Panel A Public Hearing Minutes

BOARD OF ADJUSTMENT ACTION: May 17, 2022

MOTION: Neumann

Approval of the April 19, 2022 Board of Adjustment Panel A Public Hearing Minutes

SECONDED: Lamb

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

******Lamb/Narey 1st approval withdrawn to verify start time of briefing. Verified at 11:05 a.m. and new vote to approve was taken*****

MISCELLANEOUS ITEM NO. 3

Approval of the January 11, 2022 Board of Adjustment Special Meeting Minutes

BOARD OF ADJUSTMENT ACTION: May 17, 2022

MOTION: Lamb

Approval of the January 11, 2022 Board of Adjustment Special Meeting Minutes

SECONDED: Narey

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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 five-foot side yard setback on the northeast side, which will require a five-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 five 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:

- (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:

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 490-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 southeastern façade of the structure while the northeastern proposes a side yard setback of five feet.

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 4,257-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 five-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 May 10, 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 23rd deadline to submit additional evidence for staff to factor into their analysis; and the March 4th 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.

April 19, 2022: The Board held the request under advisement until May 17, 2022.

May 4, 2022: The applicant submitted a revised site plan depicted a five-foot side yard setback along the northeastern portion of the site and reconfiguration of the proposed front porch. As a result, the BO report (**Attachment B**) was amended to reflect the revision.

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)

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: May 17, 2022

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

APPEARING IN OPPOSITION: None.

MOTION: Halcomb

I move that the Board of Adjustment, in Appeal No. BDA 212-017, on application of Joseph DePumpo, **grant** the five-foot variance to the side yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Lamb

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

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

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 27, 2022, the applicant provided revised evidence.

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.

STAFF RECOMMENDATION (Side yard variance and FAR variance):

Approval, subject to compliance with the submitted site plan:

Rationale:

Staff concluded that the subject site is unique and different from most lots in Subarea 1 within Conservation District No. 13 considering its restrictive lot area of 10,800 square feet. Evidence (**Attachment A**) provided by the applicant, reflects a comparison of six lots within the same zoning district. Per the comparative analysis, the average lot area is 13,894 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: 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-three-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-one-half times greater than the minimum lot size.

The applicant has submitted a document comparing the lot sizes of the subject site with six adjacent properties in the same zoning district. Staff concluded that the subject site is unique and different from most lots in Subarea 1 within Conservation District No. 13 considering its restrictive lot area of 10,800 square feet. Evidence (**Attachment A**) provided by the applicant, reflects a comparison of six lots within the same zoning district. Per the comparative analysis, the average lot area is 13,894 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.

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 May 10, 2022, staff has received 13 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 23rd deadline to submit additional evidence for staff to factor into their analysis; and the March 4th 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.

April 19, 2022: The Board held the request under advisement until May 17, 2022.

April 27, 2022: The applicant provided revised evidence (**Attachment A**).

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)

BOARD OF ADJUSTMENT ACTION: March 22, 2022

APPEARING IN FAVOR: Alfredo Pena 410 E. 5th 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: May 17, 2022

APPEARING IN FAVOR: Stephen Marley 1218 N. Clinton Ave. Dallas, TX
Fred Pena 410 E. 5th St. 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 **June 21, 2022**.

SECONDED: **Halcomb**

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

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

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:

The City’s attorney revised previously submitted additional evidence for consideration (**Attachment B**). No new information was provided by the applicant at the docket deadline.

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:

<u>Site:</u>	RR Regional Retail District
<u>Northwest:</u>	R-7.5(A) Single Family District
<u>North:</u>	MF-1(A) Multifamily District
<u>East:</u>	MC-4 Multiple Commercial District
<u>South:</u>	MC-4 Multiple Commercial and CR Community Retail Districts
<u>West:</u>	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**).
- March 22, 2022: The applicant and City representation agreed to a holdover. Panel A held this appeal to April 19, 2022.
- April 8, 2022: No new information was provided by the docket deadline.
- April 19, 2022: The applicant and City representation agreed to a holdover. Panel A held this appeal to May 17, 2022.

May 6, 2022: The City's attorney revised previously submitted additional evidence for consideration (**Attachment B**). No new information was provided by the applicant at the docket deadline.

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)

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: May 17, 2022

APPEARING FOR PUBLIC TESTIMONY: Tom Dupree 5132 Bellerive Dr. Dallas, TX

APPEARING IN FAVOR: Roger Albright 11411 W. NW Hwy. #111 Dallas, TX
Ross Carroll 9413 Caliente Dr. Dallas, TX.
Matthew Morgan 6501 S. Congress Ave. #104
Austin, TX

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

MOTION: Lamb

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. BDA 212-028, on application of Matthew Morgan, represented by Roger Albright, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **reverse** the decision of the administrative official and **grant** the relief requested by this applicant.

SECONDED: Halcomb

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- 1:45 p.m.

Resume- 1:50 p.m.

Recess- 3:14 p.m.

Resume- 3:20 p.m.

5:23 P.M. Board Meeting adjourned for **May 17, 2022**

CHAIRPERSON signed 6-21-22

BOARD ADMINISTRATOR

BOARD SECRETARY

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