

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN AUDITORIUM  
MONDAY, May 18, 2020**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Robert Agnich, regular member, Judy Pollock, regular member, Moises Medina, regular member, and Roger Sashington, regular member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Robert Agnich, regular member, Judy Pollock, regular member, Moises Medina, regular member, and Roger Sashington, regular member

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Oscar Aguilera, Senior Planner, Sarah May, Chief Planner, David Nevarez, Senior Engineer, Robyn Gerard, Senior Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, Phil Erwin, Arborist, Lloyd Denman, Assistant Director- Engineering Div., Neva Dean, Assistant Director, Kris Sweckard, Director.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Oscar Aguilera, Senior Planner, Sarah May, Chief Planner, David Nevarez, Senior Engineer, Robyn Gerard, Senior Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, Phil Erwin, Arborist, Lloyd Denman, Assistant Director- Engineering Div., Neva Dean, Assistant Director, Kris Sweckard, Director.

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**11:14 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 18, 2020 docket.**

**BOARD OF ADJUSTMENT ACTION: May 18, 2020**

**1:08 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel C, February 20, 2020 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: May 18, 2020**

**MOTION: Pollock**

Approval of the Board of Adjustment Panel C, February 20, 2020 public hearing minutes.

**SECONDED: Agnich**

**AYES:** 5 – Hounsel, Agnich, Pollock, Medina, Sashington

**NAYS:** 0

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

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**FILE NUMBER:** BDA190-031(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Danny Sipes for a variance to the front yard setback regulations at 2212 Worthington Street. This property is more fully described as Lot 12H, Block H/573, and is zoned PD No. 225 (Interior Neighborhood Mid-Rise Residential), which requires a front yard setback of eight feet. The applicant proposes to construct and/or maintain a structure and provide a seven-foot, three-inch front yard setback, which will require a nine-inch variance to the front yard setback regulations.

**LOCATION:** 2212 Worthington Street

**APPLICANT:** Danny Sipes

**REQUEST:**

A request for a variance to the front yard setback regulations of nine inches is made to maintain a single family home structure located seven feet, three inches from the site's front property line or nine inches into the eight-foot front yard setback.

### **STANDARD FOR A VARIANCE<sup>1</sup>:**

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:

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

### **STAFF RECOMMENDATION:**

Denial

Rationale:

- Staff concluded that while granting this variance request for one floor of a four-story townhome to encroach nine inches into an eight-foot front yard setback would not appear to be contrary to public interest, the request should be denied because the applicant had not provided documentation to the other components of the variance standard:
  1. how the variance was necessary to permit development of this parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope (in this case, the subject site is flat, rectangular in shape, and is, according to the application, 0.036 acres or approximately 1,600 square feet in area), that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same PD No. 225 zoning district (the applicant provided no information related to this); and
  2. how granting this request would not be to relieve a self-created or personal hardship, nor for financial reasons only.

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<sup>1</sup> Reference Section 51(A)-3.102(d)(10) of the Dallas Development Code.

**BACKGROUND INFORMATION:**

**Zoning:**

**Site:** PD No. 225 (Interior Neighborhood Mid-Rise Residential)

**North:** PD No. 225 (Interior Neighborhood Mid-Rise Residential)

**South:** PD No. 225 (Interior Neighborhood Mid-Rise Residential)

**East:** PD No. 225 (Interior Neighborhood Mid-Rise Residential) with SUP No. 835

**West:** PD No. 225 (Interior Neighborhood Mid-Rise Residential)

**Land Use:**

The subject site is developed with a single family home. The areas to the north, south, and west are developed with residential uses, and the area to the east is developed with an electrical substation.

## **Zoning/BDA History:**

1. BDA189-122, Property at 2212 Worthington Street (the subject site)

On November 18, 2019, the Board of Adjustment Panel C denied a request for a variance to the front yard setback regulations without prejudice. The request has not changed. Additional details about the stone have been provided.

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

The subject site is zoned PD No. 225<sup>2</sup> (Interior Neighborhood Mid-Rise Residential) which states the following: All structures must have a minimum setback of eight feet. Trellises, screens, awnings, and canopies may intrude into the required minimum front yard a distance of up to five feet.

The purpose of this request for variance to the front yard setback regulations of nine inches is to maintain the southwestern facade of a portion of the third floor of the four-story, 4,530-square-foot single family townhome structure located seven feet, three inches from the site's southwest front property line, as most clearly identified on the submitted floor plan, "Third Floor Plan 'H'". According to permit records, a building permit was issued for the structure on December 7, 2017. At the time of this report, a revised site plan properly identifying the third level encroachment into the eight-foot front yard was pending. The site plan provided indicated the first floor setback of 10 feet, one-inch, which exceeds the existing requirement of eight feet for the front yard.

The property is flat, rectangular in shape, and is, according to the application, 0.036 acres (or approximately 1,600 square feet) in area. The site is zoned PD No. 225 (Interior Neighborhood Mid-Rise Residential) which has no minimum lot size requirements.

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

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<sup>2</sup> Refer to [Section 51P-225.116\(f\)\(A\)](#).

development upon other parcels of land in districts with the same PD No. 225 (Interior Neighborhood Mid-Rise Residential) zoning classification.

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

On February 24, 2020, the applicant submitted a statement noting how the owner is “unable to meet the setback due to the previously used stone which was a thin stone facade that had been discontinued. The substituted stone that met the current architecture style with installation made it unable for us to meet the required setback due to the thickness of the material.” Staff did not find this evidence to support the remaining variance standards.

If the board were to grant the variance request and impose compliance with a site plan as a condition, the structure in the front yard setback would be limited to what is shown on the plan. At this time, the site plan does not properly identify the request, which in this case is a portion of the third floor of the four-story townhome that is located nine inches into the required eight-foot front yard setback. If the board were to grant this request, staff urges the board to require an updated site plan clarifying the setback provided at the third level of the unit, subject of this request.

**Timeline:**

November 18, 2019: The Board of Adjustment Panel C denied a request for a variance to the front yard setback regulations without prejudice at the subject site. The request has not changed. Additional details about the stone have been provided.

January 10, 2020: 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 11, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

February 14, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> deadline to submit additional

evidence to be incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application.
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

February 24, 2020: The applicant submitted an additional statement regarding the stone façade material (Attachment A).

February 27, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Chief Planner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer.

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

**BOARD OF ADJUSTMENT ACTION: May 18, 2020**

**APPEARING IN FAVOR:** Rob Baldwin 3904 Elm St. Dallas, TX.  
Linda Earnhart 6709 Prestonshire Dallas, TX.  
William Brown 6516 Bob O Link Dallas, TX.  
Matt Edwards 2110 Tetley Dr. Dallas, TX.  
Randy Shafer 4514 Travis #300 Dallas, TX.  
Danny Sipes P.O. Box 3293 Forney, TX.

**APPEARING IN OPPOSITION:** None.

**MOTION#1: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 190-031, on application of Danny Sipes, **deny** the variance to the front yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

**SECONDED: Agnich**

**AYES:** 2 – Hounsel, Agnich

**NAYS:** 3 – Pollock, Medina, Sashington

**MOTION FAILED:** 2 – 3

**MOTION#2: Medina**

I move that the Board of Adjustment, in Appeal No. BDA 190-031, on application of Danny Sipes, **grant** the nine-inch variance to the front 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 and site guide is required.

**SECONDED: Sashington**

**AYES:** 4 – Hounsel, Pollock, Medina, Sashington

**NAYS:** 1 – Agnich

**MOTION PASSED:** 4 – 1

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**FILE NUMBER:** BDA190-034(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Baij Nath Singh for a variance to the front yard setback regulations, and for a variance to the off-street parking regulations at **4806 Huey Street**. This property is more fully described as a tract of land in Block 4458, and is zoned PD-595 (R-5(A)), which requires a front yard setback of 20 feet and requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a single family residential structure and provide a nine-foot three-inch front yard setback, which will require a 10-foot nine-inch variance to the front yard setback regulations, and to construct a single family residential structure with a setback of nine feet three inches, which will require a 10-foot nine-inch variance to the off-street parking regulations.

**LOCATION:** 4806 Huey Street

**APPLICANT:** Baij Nath Singh

**REQUESTS:**

Two requests are made to construct a one-story single family structure with a total 1,765 square feet of floor area with an attached garage that would be entered directly from the street:

1. A request for a variance to the front yard setback regulations of 10 feet nine inches is made to construct a one-story single family structure with a total 1,765 square feet of floor area, which is proposed to be located nine feet three inches from the site's front property line or 10 feet nine inches into the 20-foot front yard setback on an undeveloped site.
2. A request for a variance to the off-street parking regulations of 10 feet nine inches is made to construct an attached garage that would be entered directly from the street. The enclosed parking space is proposed to be located nine feet three inches from the street right-of-way line, which requires a variance of 10 feet nine inches to the off-street parking regulations.

**STANDARD FOR A VARIANCE**<sup>3</sup>:

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:

- 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;
- 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
- not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a

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<sup>3</sup> Reference §51(A)-3.102(d)(10) of the Dallas Development Code for the variance standard.

privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION (front yard variance):**

Denial

Rationale:

The request should be denied because the applicant did not provide documentation to the components of the variance standard:

3. The unnecessary hardship was unclear. The applicant claims that the request will maintain the character of the neighborhood, which is largely nonconforming;
4. Staff concluded that while the lot, with 3,800 square feet of floor area located in an R-5(A) Subdistrict of PD No. 595, which requires a minimum lot size of 5,000 square feet, is restrictive in area, the parcel is generally flat and rectangular (50 feet by 76 feet). Ultimately, it could not be determined that the property cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning district (the applicant provided no information related to this comparison); and,
5. How granting this request would not be to relieve a self-created or personal hardship, nor for financial reasons only.

**STAFF RECOMMENDATION (parking variance):**

Denial

Rationale:

Staff recommends denial because the applicant did not provided documentation to prove the following components of the variance standards were met:

1. The request was found contrary to public interest (the Sustainable Development and Construction Senior Engineer has submitted a Review Comment Sheet marked “recommends denial”). The engineer found that the “proposed garage would provide sufficient space to accommodate a car encroaching into the sidewalk and forcing pedestrians onto travel lanes of Huey Street.” Additionally, “Per Texas Transportation Code, a vehicle may not stop, stand or park, whether attended or unattended, while obstructing any portion of a sidewalk.”;
2. While the lot, with 3,800 square feet of floor area located in an R-5(A) Subdistrict of PD No. 595, which requires a minimum lot size of 5,000 square feet, is

restrictive in area, the parcel is generally flat and rectangular (50 feet by 76 feet). Ultimately, it could not be determined that the property cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning district (the applicant provided no information related to this comparison); and,

3. How granting this request would not be to relieve a self-created or personal hardship, nor for financial reasons only.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site:** R-5(A) (Single Family Subdistrict within PD No. 595)
- Northwest:** R-5(A) (Single Family Subdistrict within PD No. 595)
- Northeast:** R-5(A) (Single Family Subdistrict within PD No. 595)
- Southeast:** R-5(A) (Single Family Subdistrict within PD No. 595)
- Southwest:** R-5(A) (Single Family Subdistrict within PD No. 595)

**Land Use:**

The subject site is undeveloped. The areas to the northwest, northeast, and southwest are also undeveloped. The properties to the southeast are developed with single family uses.

**Zoning/BDA History:**

There have not been any related board or zoning cases near the subject site within the last five years.

**GENERAL FACTS /STAFF ANALYSIS:**

The subject site is zoned an R-5(A) Single Family Residential Subdistrict within PD No. 595. The minimum lot size in this district is 5,000 square feet. There are no minimum lot dimensions. The property is 50 feet wide and 76 feet deep with approximately 3,800

square feet of area. An R-5(A) Subdistrict requires a minimum front yard of 20 feet<sup>4</sup>. Additionally, a 20-foot setback is required from the right-of-way line for enclosed parking spaces with direct access to a street or alley<sup>5</sup>.

The purpose of these requests for variances of 10 feet nine inches to the front yard setback and off-street parking requirements is to construct a 1,765-square-foot one-story single family structure with an attached one-car garage located nine feet three inches from the property line along Huey Street or 10 feet nine inches into the 20-foot front yard. This is an encroachment upon the required front yard and the off-street parking setback of 20 feet (concurrent setbacks).

Overall, the subject site is flat and rectangular in shape, and while restrictive in lot area, the lot pattern seems consistent with the remainder of the street.

On March 3, 2020, the applicant submitted an email stating that the reasons for the variances requested pertain to the restrictive lot area; built environment of other nonconforming structures on Huey Street; that Huey Street is not a major thoroughfare; and, a need for creativity in design.

On March 4, 2020, the applicant submitted a presentation as evidence with photos of surrounding properties and statements relating to how the variance standard is being met and/or the requests are in character for the neighborhood.

As of March 6, 2020, no letters have been submitted in support/opposition to the request.

Relating to the requested **front yard variance**, the applicant has the burden of proof in establishing that the request for a variance to the front yard setback meets the variance standard completely. If the board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setbacks would be limited to what is shown on this document– which is a structure that would be located nine feet three inches from the site’s front property line along Huey Street.

Additionally, the Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “recommends denial.” The engineer found that the “proposed garage would provide sufficient space to accommodate a car encroaching into the sidewalk and forcing pedestrians onto travel lanes of Huey Street.” Additionally, “Per Texas Transportation Code, a vehicle may not stop, stand or park, whether attended or unattended, while obstructing any portion of a sidewalk.”

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<sup>4</sup> Reference §51A-4.112(g)(4)(G)(i) of the Dallas Development Code for lot size provisions in an R-5(A) District.

<sup>5</sup> Reference §51A-4.301(a)(9) of the Dallas Development Code for parking setback requirements for enclosed spaces.

Relating to the requested **off-street parking variance**, the applicant has the burden of proof in establishing that the request for a variance to the off-street parking regulations meets the variance standard completely. If the board were to grant the variance request, staff recommends imposing the following conditions which are suggested to help assure that the variance will not be contrary to the public interest:

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

**Timeline:**

January 16, 2020: 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 11, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

February 14, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:

- a copy of the application materials including the Building Official’s report on the application;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 27, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Chief Planner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer.

February 28, 2020: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "Recommends Denial" (Attachment A).

March 3, 2020: The applicant submitted an additional statement regarding the neighborhood and request (Attachment B).

March 4, 2020: The applicant submitted a copy of a presentation with photos and descriptions of how the request will fit into the neighborhood (Attachment C).

**BOARD OF ADJUSTMENT ACTION: May 18, 2020**

**APPEARING IN FAVOR:** Rajesh Singh 9400 Plano Rd. Plano, TX.

**APPEARING IN OPPOSITION:** None.

**MOTION#1: Sashington**

I move that the Board of Adjustment, in Appeal No. BDA 190-034, on application of Baij Nath Singh, **deny** the variance to the front yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

**SECONDED: Agnich**

**AYES:** 5 - Agnich, Pollock, Medina, Sashington, Housel

**NAYS:** 0

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

**MOTION#2: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 190-034, on application of Baij Nath Singh, **deny** the off-street parking variance 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: Pollock**

**AYES:** 5 - Agnich, Pollock, Medina, Sashington, Hounsel

**NAYS:** 0

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

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**FILE NUMBER:** BDA190-039(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Phillip Thompson, represented by Alison Ashmore, for a variance to the building height regulations at **5230 Alcott Street**. This property is more fully described as Lot 15, Block C/1997, and is zoned an MF-2(A) Multifamily District, which limits the maximum building height to 26 feet due to a residential proximity slope. The applicant proposes to construct a residential structure with a building height of 36 feet, which will require a 10-foot variance to the maximum building height regulation.

**LOCATION:** 5230 Alcott Street

**APPLICANT:** Phillip Thompson

Represented by Alison Ashmore

**REQUEST:**

A request for a variance to the height regulations (specifically to the residential proximity slope<sup>6</sup>) of up to ten feet is made to complete and maintain a three-story duplex structure to a height of 36 feet—a height that exceeds the maximum structure height of 26 feet permitted by the residential proximity slope that begins at the single family residentially-zoned property from the south and west zoned an R-5(A) Single Family District by up to 10 feet.

**STANDARD FOR A VARIANCE<sup>7</sup>:**

<sup>6</sup> Reference §51(A)-4.412 of the Dallas Development Code for information on residential proximity slope.

<sup>7</sup> Reference §51(A)-3.102(d)(10) of the Dallas Development Code for the variance standard.

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:

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

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

- Compliance with the submitted site plan and sections/elevations are required.

Rationale:

- Staff concluded that the lot's irregular shape and restrictive area caused by: **1)** a relatively small property zoned MF-2(A) of approximately 6,000 square feet (the lot appears smaller than any other lot zoned MF-2(A) within 300 feet), and **2)** a 28-foot required front yard setback (a setback eight feet more restrictive than lots zoned R-5(A) where the typical minimum front yard setback without the NSO is 20 feet and 13 feet more restrictive than lots zoned MF-2(A) where the minimum front yard setback would be 15 feet if the block were not divided by two zoning districts, one of which is in an NSO) preclude it from being developed in a manner commensurate with the development upon other parcels of land on similarly-zoned MF-2(A) that are regular in shape, and more typical/larger in size, and with the typical 15-foot front yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

**Site:** MF-2(A) (Multifamily District)

**North:** PD 462 (Planned Development)

**South:** MF-2(A) & R-5(A)(NSO 6)(Multifamily and Single Family Districts) with Neighborhood Stabilization Overlay)

**East:** MF-2(A) (Multifamily District)

**West:** PD 325 & R-5(A)(NSO 6) (Planned Development District and Single Family District with Neighborhood Stabilization Overlay)

**Land Use:**

The subject site is being developed with a duplex structure. The area to the north is developed with retail uses; and the areas to the east, south, and west are developed with residential uses.

**Zoning/BDA History:**

1. BDA178-094, Property at 5230 Alcott Street (the subject site)

On June 18, 2018, the Board of Adjustment Panel C denied a request for variance to the height regulations of 10' without prejudice.

The case report stated that the request was made to is made to complete and maintain a 2 - 3 story duplex structure to a height of 36' - a height that exceeds the maximum 26' in height permitted by the residential proximity slope that begins at the single family residentially-zoned property from the south and west zoned R-5(A) by up to 10'.

2. BDA178-080, Property at 5230 Alcott Street (the subject site)

On May 21, 2018, the Board of Adjustment Panel C denied a request for variance to the height regulations of 10'

without prejudice.

The case report stated that the request was made to complete and maintain a 2 - 3 story duplex structure to a height of 36' - a height that exceeds the maximum 26' in height permitted by the residential proximity slope that begins at the single family residentially-zoned property from the south and west zoned R-5(A) by up to 10'.

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

The property is zoned an MF-2(A) Multifamily District, which limits the maximum building height to 26 feet due to a residential proximity slope that begins at the single family residentially-zoned property from the south and west zoned an R-5(A) Single Family District. The applicant proposes to complete and maintain a three-story duplex structure to a height of 36 feet—a height that exceeds the maximum structure height of 26 feet and will require a 10-foot variance to the maximum building height regulation.

The subject site is located within a block that is divided by two or more zoning districts. The 5200 block of Alcott Street between N. Garrett Avenue and Henderson Avenue includes properties zoned an MF-2(A) District and properties zoned an R-5(A)(NSO 6) District.

The Dallas Development Code states, “If street frontage within a block is divided by two or more zoning districts, the front yard for the entire block must comply with the requirements of the district with the greatest front yard requirement”<sup>8</sup>.

While the subject site is zoned an MF-2(A) District which typically requires a 15-foot front yard, other properties within the 5200 block of Alcott Street between Garrett Avenue and Henderson Avenue are zoned an R-5(A)(NSO 6). The front yard setback for these properties is 28 feet, eight feet more restrictive than other properties zoned an R-5(A) District without the NSO where the typical minimum front yard setback is 20 feet.

The required front yard setback for the subject site is 28 feet given its location in this block divided by two or more zoning districts. This setback is eight feet more restrictive than lots zoned an R-5(A) District where the typical minimum front yard setback without

the NSO is 20 feet. The 28-foot setback is also 13 feet more restrictive than lots zoned an MF-2(A) District where the minimum front yard setback would be 15 feet if the block were not divided by two zoning districts, one of which is in an NSO.

The maximum height for a structure in a MF-2(A) zoning district is 36 feet, however, any portion of a structure over 26 feet-in-height cannot be located above a residential proximity slope without providing an additional setback.

In this case, given that the subject site is immediately adjacent to properties zoned low-density, single family districts to the north, south, and west, the height of a structure must comply with a 1:3-slope (or for structures above 26 feet-in-height, every additional foot-in-height requires an additional setback of three feet away from protected property in an R, R(A), D, D(A), TH, or TH(A) residential zoning district).

The applicant submitted two section/elevation documents that represent a 1:3-slope (or a foot-in-height for every three feet away from property in an R(A) residential zoning district on the structure seeking variance). These documents represent a variance need of nine feet six inches.

The Building Official's Report states that a variance to the height regulations of 10 feet is requested since a structure is proposed to reach 36 in height or 10 feet higher than/beyond the 26-foot height allowed for the structure as it is located on the subject site.

According to DCAD records, the "main improvement" at 5230 Alcott Street is a structure built in 2017 with 4,500 square feet of living/total area; and with "additional improvements" listed as two attached garages at 552 and 528 square feet.

The site is flat, somewhat irregular in shape, and according to the application is 0.137 acres (or approximately 6,000 square feet) in area.

The subject site is approximately 139 feet in length on the north, approximately 135 feet in length on the south, approximately 30 feet in width on the east, and approximately 60 feet in width on the west.

The relatively small MF-2(A) zoned subject site at approximately 6,000 square feet in area has a lesser amount of developable space when a 28-foot front yard setback must be accounted for on this site as opposed to a more typical 15-foot front yard setback.

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<sup>8</sup> Reference §51(A)-4.401(a)(6) of the Dallas Development Code for front yard requirements with split zoning on a blockface.

The site has a 13-foot greater front yard setback than most lots in the same zoning in a block not divided by two zoning districts one of which is a single family zoning district with an additional setback set forth in an NSO.

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

- That granting the variance to the height 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 to height regulations 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(A) zoning classification.
- The variance to height setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) zoning classification.

On February 28, 2020, the representative submitted additional evidence relating to the variance to height (RPS). The evidence includes specific examples of how the property and situation have met the variance standard (Attachment A). On March 6, 2020, the representative submitted additional evidence to support the variance request including a timeline of events, four letters of support, and a statement from one of the property owners (Attachment B). As of March 11, 2020, seven letters of opposition had been submitted.

If the Board were to grant the request and impose the submitted site plan and elevations as a condition, the structure exceeding the height limit or the RPS would be limited to what is shown on these three documents – which, in this case, is a structure that would be exceed the height limit/RPS by up to 10 feet.

**Timeline:**

May 21, 2018: The Board of Adjustment, Panel C, recommended denial of this request.

- June 14, 2018: The Board of Adjustment, Panel C, recommended denial of this request.
- June 28, 2018: The applicant/representative appealed the decision of the board to District Court.
- May 2, 2019: The court recommended mediation.
- July 30, 2019: The City and applicant filed an agreed motion to abate the lawsuit and remand to the Board of Adjustment.
- January 28, 2020: 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 11, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case".
- February 14, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant's representative the public hearing date and panel that will consider the application; the February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:
- a copy of the application materials including the Building Official's report on the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- February 27, 2020: 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 Assistant City Attorney to the board and the following from the

Sustainable Development and Construction Department: Board of Adjustment staff including the Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Chief Planner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer.

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

February 28, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (Attachment A).

March 6, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (Attachment B).

**BOARD OF ADJUSTMENT ACTION: May 18, 2020**

**APPEARING IN FAVOR:**

Alison Ashmore 1717 Main St.# 4200 Dallas, TX.  
Joe Rubio 1717 Main St.# 4200 Dallas, TX.  
Philip Thompson 8541 Fisk St. Frisco, TX.

**APPEARING IN OPPOSITION:**

Meg Moschetto 5031 Homer St Dallas, TX.  
Chris Bowers 1800 Valley View Farmers Branch, TX  
Alan Rister 5222 Homer St. Dallas, TX.  
Doug Meloth 5226 Alcott St. Dallas, TX.  
Judy Sullivan 5217 Homer St. Dallas, TX.  
Jean Irwin 5107 Alcott St. Dallas, TX.  
Cynthia Mondell 56215 Homer St. Dallas, TX.

**MOTION: Agnich**

I move that the Board of Adjustment, in Appeal No. BDA 190-039, on application of Phillip D. Thompson, represented by Alison Ashmore, **deny** the 10-foot variance requested by this applicant **with** 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 and that it is not a restrictive 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.

**SECONDED: Sashington**

**AYES:** 4 - Agnich, Pollock, Housel, Sashington

**NAYS:** 1 - Medina

**MOTION PASSED:** 4 – 1

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**FILE NUMBER:** BDA190-020(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Ramin Amini for a special exception to the landscape regulations at 2803 W. Illinois Avenue. This property is more fully described as Tract 13, Block 5966, and is zoned an MF-1(A) Multifamily District, which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 2803 W. Illinois Avenue

**APPLICANT:** Ramin Amimi

**REQUEST:**

A request for a special exception to the landscape regulations is made to maintain a multifamily use and not fully meet the landscape regulations or, more specifically, to not provide the required site trees, landscape design points, street buffer zone requirements, parking lot landscaping, and the residential adjacency buffer requirements on the subject site.

**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.

**REVISED MARCH 16, 2020 STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted revised alternate landscape plan is required.

Rationale:

- The chief arborist recommends approval of the special exception of the revised alternate landscape plan of February 20, 2020 with the four added conditions stating specific landscape requirements for the property. The four conditions are listed on the revised alternate landscape plan.

**FEBRAURY 20, 2020 STAFF RECOMMENDATION:**

Denial

Rationale:

- Although the chief arborist does agree that full compliance with the requirements of Article X will unreasonably burden the use of the established use on the property, the chief arborist recommends denial of the special exception because additional landscape elements could be applied to the street buffer zone to enhance the aesthetic and buffering aspects along the street frontage and further landscape improvements along the public right-of-way could reduce negative impacts to neighboring properties.

**BACKGROUND INFORMATION:**

**Zoning**

- Site: MF-1(A) (Multifamily District)
- North: PD No. 831(Planned Development District)
- East: R-7.5 (A) (Single Family District)
- South: L1 (Light Industrial District)
- West: CR (Community Retail District)

**Land Use:**

The subject site is developed with multifamily use. The area to the north is developed with school use; the areas to the east is develop with single family homes; the area to the south, and west are developed with light industrial and retail uses.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

This request for a special exception to the landscape regulations focuses on maintaining a multifamily use and not fully meeting the landscape regulations, or more specifically, not providing the required site trees, landscape design points, street buffer zone requirements, parking lot landscaping, and the residential buffer zone requirements on the subject site.

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.

The City of Dallas chief arborist submitted a memo regarding the applicant’s request (see Attachment A).

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

The applicant is requesting a special exception to Article X landscape regulations required with the addition of new impervious surface exceeding 2.000 square feet.

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

- The property has an existing multifamily use (MF-1(A)) developed prior to city zoning regulations for landscaping. According to a 2003 certificate of occupancy for Oakridge Apartments, the property has been renovated and maintained since 1958. Existing landscape trees are primarily along the fence line perimeter of the

lot with a few planted trees along the street front façade of the structure. A large elm is at the southeast corner (street front) of the lot.

- In response to site complaints by the City for various code matters, the owner recently removed the lawn turf in the front and interior court area to establish new parking spaces with an impervious surface but had not done so by permit. In the process of seeking a new permit for a small addition, the permit violation was discovered, and the owner moved to seek a special exception for an alternative landscape plan.
- The property is subject to compliance with the 2018 amendments to Article X. The property has residential adjacency (R-7.5(A)) to the east of the lot. The property exceeds the 17 site tree requirement with existing tree credits on the lot and near the boundary

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

- The proposed landscape plan is deficient 1) the required street buffer zone and 2) residential buffer zone requirements. The 3) interior landscape requirements for lots with 101 or more parking spaces are not met (10.125).
- The 1.53 acre lot requires 20 landscape design points (10.126). Up to 10 points may be provided for building façade landscape design grouping of small/medium trees. Additional landscaping could be provided for screening of off-street parking for 5 points, or a maximum of 10 points but no landscape improvement is indicated on the plan. Irrigation is not identified for the landscape area on the plan.
- The street buffer zone described on the plan would meet the minimum requirements for buffer zone dimensions (minimum of 5 feet and average of 10 feet depth) but does not provide the sufficient number of street buffer zone trees and plants.
- The residential buffer zone does not provide appropriate buffering function with insufficient vegetation and provides no fence screening element from the residences across the alley. However, it is recognized there are concerns for public safety along this buffer and a reduced buffer element as currently provided may be appropriate for security purposes both on the property and for the adjacent residential lots.

The chief arborist's revised memo states the following with regard to the "recommendation":

- The chief arborist recommends approval of the special exception of the revised alternate landscape plan of February 20, 2020 with the four added conditions stating specific landscape requirements for the property. The four conditions listed on the revised alternate landscape plan are as follows; a minimum of 31 Texas sage shrubs must be installed in a row in a dedicated planting bed between the off-street parking and the street, the shrub row must be installed at a minimum height of two feet and maintained after one year as a hedge to a height of no less than three feet, the street front landscape area must be located a maximum of 100 feet from an irrigation source with a permanently installed threaded hose connection, and all established landscape areas must be maintained with existing landscape plants in a healthy growing condition.

In response to site complaints by the City for various code matters, the owner recently removed the lawn turf in the front and interior court area to establish The applicant has the burden of proof in establishing the following:

- Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and
- The special exception will not adversely affect neighboring property.

If the board were to grant this request and impose the submitted revised alternate landscape plan as a condition to the request, the site would be provided an exception from providing the site trees in the required location and the residential adjacency buffer requirements on the subject site.

**Timeline:**

December 16, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

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

January 17, 2020: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 7<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 30, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included the Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.

February 5, 2020: The City of Dallas chief arborist submitted a memo regarding this request (see Attachment A).

February 20, 2020: The Board of Adjustment Panel C conducted a public hearing on this application, and delayed action on this application until the next public hearing to be held on March 16, 2020 to allow the applicant to modify his site plan per the arborist specifications.

February 21, 2019: The Dallas chief arborist submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment B).

February 24, 2020: The Board Senior Planner wrote the applicant a letter of the board's action; the February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis, and the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

February 27, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

March 2, 2020: The City of Dallas chief arborist submitted a memo regarding this request (see Attachment C).

**BOARD OF ADJUSTMENT ACTION: May 18, 2020**

APPEARING IN FAVOR: Ramin Amini 2803 W. Illinois Ave. Dallas, TX.

APPEARING IN OPPOSITION: None.

**MOTION: Pollock**

I move that the Board of Adjustment, in Appeal No. BDA 190-020, on application of Ramin Amini, **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, the testimony presented to us, and the facts that we have determined show that (1) strict compliance with the requirements of the 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.

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

Compliance with the submitted revised alternate landscape plan is required.

**SECONDED: Agnich**

AYES: 5 – Agnich, Pollock, Medina, Hounsel, Sashington

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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The meeting was adjourned **at 5:17 P.M. on May 18, 2020.**

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CHAIRPERSON

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

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BOARD SECRETARY

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