

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, MAY 18, 2022**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Michael Karnowski, regular member, Herlinda Resendiz, regular member and Joseph Cannon, regular member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Michael Karnowski, regular member, Herlinda Resendiz, regular member and Joseph Cannon, regular member

MEMBERS ABSENT FROM HEARING: 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, Robyn Gerard, Senior Public Information Officer, David Nevarez, Senior Traffic Engineer and Jason Pool, Sign Code Specialist

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, Robyn Gerard, Senior Public Information Officer, David Nevarez, Senior Traffic Engineer and Jason Pool, Sign Code Specialist

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 18, 2022 docket.**

BOARD OF ADJUSTMENT ACTION: May 18, 2022

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 Board of Adjustment Panel B, April 20, 2022 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: May 18, 2022

MOTION: Karnowski

Approval of the Board of Adjustment Panel B, April 20, 2022 public hearing minutes.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Approval of the January 11, 2022 Board of Adjustment Special Meeting minutes.

BOARD OF ADJUSTMENT ACTION: May 18, 2022

MOTION: Karnowski

Approval of the January 11, 2022 Board of Adjustment Special Meeting minutes.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

FILE NUMBER: BDA212-037(PD)

BUILDING OFFICIAL’S REPORT: Application of Alexander Quintanilla for a variance to the front yard setback regulations at 2921 Sale Street. This property is more fully described as Lot 16 in City Block 1030 and is zoned an MF-3 Multiple Family Subdistrict within Planned Development District No. 193, which requires a front yard setback of 20 feet. The applicant proposes to construct a second story atop of an existing single-family dwelling with porch and provide a 12-foot front yard setback, which will require an eight-foot variance to the front yard setback regulations.

LOCATION: 2921 Sale Street

APPLICANT: Alexander Quintanilla

REQUESTS:

A request for a variance to the front yard setback regulations of eight feet is made to construct and maintain a second story with a porch atop of an existing single-family residential dwelling

within the subject site's 20-foot front yard setback on a site currently developed and situated on an interior lot.

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 compliance with the submitted site plan:

Rationale:

- Staff concluded that the subject site is unique and different from most parcels in an MF-3 Multiple Family Subdistrict developed with single-family dwellings. Utilizing the evidence

provided by the applicant (**Attachment A**), the subject site provides a lot area of 3,900 square feet while the comparative analysis of four properties with similar zoning and development provides an average lot area of 4,228 square feet. The restrictive lot area conclusively encumbers the site to a maximum lot coverage of 2,340 square feet while the four comparative properties permit a maximum lot coverage of 2,070 square feet, 1,950 square feet, 3,302 square feet, and 2,825 square feet, respectively. Currently the site is developed with a one-story single-family dwelling unit with a total floor area of 1,040 square feet and a lot coverage of 26 percent while the MF-3 Multiple Family Subdistrict permits a maximum lot coverage of 60 percent. Thus, the evidence establishes that the subject property has an unnecessary hardship and is unable to be developed in a manner commensurate with the development upon other parcels of land with the same MF-3 Subdistrict zoning classification.

BACKGROUND INFORMATION:

Zoning:

Site: MF-3 Multiple Family Subdistrict within PDD No. 193
North: MF-3 Multiple Family Subdistrict within PDD No. 193
South: O-2 Office Subdistrict within PDD No. 193
East: MF-3 Multiple Family Subdistrict within PDD No. 193
West: MF-3 Multiple Family Subdistrict within PDD No. 193

Land Use:

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

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 constructing and maintaining a second story addition with a porch atop of an existing one-story single-family dwelling unit. While a porch exists on the one-story single-family dwelling unit within the required 20-foot setback, the existing porch is considered non-conforming and permitted to remain provided there are no enlargements. The construction of the proposed second story with porch atop of the existing structure proposes the same encroachment yet triggers compliance with the required 20-foot front yard setback. However, the footprint of the existing one-story single-family dwelling unit provides a front yard setback of 12-feet from the subject site's front property line, into the required 20-foot front yard setback, which requires an eight-foot variance.

Sec. 51P-193.118(b)(9) which regulates the minimum front yard provisions for residential structures on lots zoned an MF-3 Multiple Family Subdistrict stipulates an applicable modification that residential development tracts and single family uses in MF-1, MF-2, and MF-3 subdistricts shall provide a minimum front yard setback of 20 feet.

A site plan has been submitted denoting the proposed second story addition will be located twelve feet from the front property line along Sale Street. Further, the site plan depicts an approximately 1,406-square-foot second story addition, with an existing 1,378-square-foot first story and 254-square-foot detached garage situated along an interior yard fronting Sale Street. If approved, the subject site will provide a total floor area of 3,038 square feet.

The subject site is not irregular in shape and provides approximately 3,920 square feet in lot area. An MF-3 Multiple Family Subdistrict requires lots to have a minimum lot size of 2,000 square feet for single-family structures.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The 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-3 Multiple Family Subdistrict 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 MF-3 Multiple Family Subdistrict zoning classification.

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, no letters have been submitted in opposition of the request or in support of the request.

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

Timeline:

February 15, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

April 12, 2022: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

April 4, 2022: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the April 27, 2022 deadline to submit additional evidence for staff to factor into their analysis; and the May 6, 2022 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.

April 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Chief Arborist, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

April 29, 2021: Documentary evidence was provided by the applicant (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: May 18, 2022

APPEARING IN FAVOR: Alexander Quintanilla 10440E. Northwest Hwy. Dallas, TX

APPEARING IN OPPOSITION: None
MOTION: **Karnowski**

I move that the Board of Adjustment **grant** the following applications listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code, as applicable to wit:

BDA 212-037—Application of Alexander Quintanilla for a variance to the front yard setback regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Shouse

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

FILE NUMBER: BDA212-041(PD)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin of Baldwin Planning for a special exception to the fence height regulations at 6806 Wander Place. This property is more fully described as Lot 8 in City Block 7489 and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct a six-foot-four-inch-tall fence, which will require a two-foot-four-inch special exception to the fence regulations.

LOCATION: 6806 Wander Place

APPLICANT: Rob Baldwin of Baldwin Planning

REQUEST:

The applicant proposes a fence with a maximum height of six feet four inches, constructed of steel rails, pickets and posts located along the Wander Place frontage. The site is currently under construction with a two-story single-family dwelling.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single Family District)
North: R-1ac(A) (Single Family District)
East: R-1ac(A) (Single Family District)
South: R-10(A) (Single Family District)
West: R-10(A) (Single Family District)

Land Use:

The subject site is under construction with a single-family dwelling. Surrounding properties to the north, east, and west, and south are developed with single-family uses as well.

Zoning/BDA History:

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

1. BDA189-126: On November 18, 2019, Panel C, Board of Adjustment granted a special exception to the fence standards regulations at 4047 Cochran Chapel Road.
2. BDA189-038: On May 20, 2019, Panel C, Board of Adjustment denied without prejudice three variance requests to the front yard setback regulations and granted a special exception to the fence regulations to construct and maintain a nine-foot six-inch high fence and granted a special exception to the visibility obstruction triangle at drive approaches at 3111 Canton Street.

GENERAL FACTS/STAFF ANALYSIS:

The request for a special exception to the fence height regulations is proposed to construct and maintain a six-foot-four-inch-tall fence in a required front yard, which will require a two-foot-four-inch special exception.

The property is currently undergoing construction. A fence with a maximum height of nine six feet four inches along the W. Ricks Circle property line is proposed with a length of 87 feet. Additionally, along the northern portion of the site the fence is proposed to continue within a 15-foot utility easement. 51A-4.602(8) of the Development Code, states that prior written approval is required to erect a fence in a utility easement, however staff has been advised by Building

Inspections that despite favorable Board action, clearance from the utility entity will have to be provided for the proposed fence to progress to permitting.

The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The subject site is zoned an R-1ac(A) Single Family District and requires a minimum front yard setback of 40 feet.

- The following information is shown on the submitted site plan:
- The proposed fence will maintain a maximum height of six feet four inches.
- The fence is proposed to be constructed with two-foot-and-one-half-inch posts with one-foot-and-one-half-inch top rails and two-foot-one-half-inch bottom rails with three-quarter pickets installed at a distance of four inches on center.

As of May 10, 2022, no letters have been submitted in opposition to or in support of the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of six-feet-four-inches located on Wander Place will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to the height would require the proposal exceeding four feet-in-height in the front yard setback located along W. Ricks Circle to be maintained in the locations and height as shown on the site plan and elevation plan.

Timeline:

- March 9, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- April 12, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 4, 2022: The Board Senior Planner emailed the representative the following information:
 - a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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.”

April 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT ACTION: May 18, 2022

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

APPEARING IN OPPOSITION: None.

MOTION: **Karnowski**

I move that the Board of Adjustment, in Appeal No. BDA 212-041, on application of Rob Baldwin, **grant** the request of this applicant to construct and/or maintain a six-foot four-inch high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: **Cannon**

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 1- Resendiz

MOTION PASSED: 4 - 1

FILE NUMBER: BDA212-038(PD)

BUILDING OFFICIAL'S REPORT: Application of Narayanan Venkatakrishnan represented by Jeffery Riddle for special exceptions to the fence standards and the visibility obstruction regulations at 17515 River Hill Drive. This property is more fully described as Lot 35, in City Block 2/8705, and zoned an R-10(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a 20-foot visibility triangle at an alley and driveway

approach. The applicant proposes to construct an eight-foot-six-inch-tall fence located within a visibility obstruction triangle.

LOCATION: 17515 River Hill Drive

APPLICANT: Narayanan Venkatakrishnan represented by Jeffery Riddle

REQUEST:

The applicant proposes to maintain an eight-foot-six-inch-tall board-on-board fence along the lot line with three electric double gates along River Hill Drive and Honey Creek Lane frontages, within required visibility obstruction triangles.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION:

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

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

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-10(A) Single Family District
<u>Northwest:</u>	MU-1 Mixed Use District
<u>North:</u>	R-10(A) Single Family District
<u>East:</u>	R-10(A) Single Family District
<u>South:</u>	R-10(A) Single Family District
<u>West:</u>	MU-1 Mixed Use District

Land Use:

The subject site is developed with a single-family dwelling unit. Surrounding properties are developed with retail and personal service uses to the west and northwest, and single-family uses to the north, east, and south.

Zoning/BDA History:

There has been one board case in the vicinity within the last five years.

1. **BDA201-101:** On October 19, 2021, Panel A, Board of Adjustment heard a request to appeal the decision of the administrative official at 17776 Dallas Parkway.

GENERAL FACTS/STAFF ANALYSIS:

The applicant proposes to maintain an eight-foot-six-inch-tall board-on-board fence with stone columns and three electric double gates along the front lot lines. The subject site is a corner lot situated along three frontages (Briargrove Lane to the north, River Hill Drive to the east, and Honey Creek Lane to the southeast and south) and developed with a one-story single-family dwelling. The fence is proposed to extend at a depth of nine feet along the front yard setbacks, within a required visibility obstruction triangle at the private drive approach along River Hill Drive and Honey Creek Lane.

The property is zoned an R-10(A) Single Family District which requires a front yard setback of 30 feet and a side yard setback of six feet. The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.

Section 51A-4.401(9)(b)(1) of the Dallas Development Code states that if a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulations in Section 51A-4.402. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations in Section 51A-4.402. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.

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

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

The following information is shown on the submitted site plan:

- The proposed fence is located in the front yards along Briargrove Lane, River Hill Drive, and Honey Creek Lane and is constructed along the front lot line.
- The length of the proposed fence in the front yard along Briargrove Lane is approximately 49 feet perpendicular to the frontage, along River Hill Drive approximately 236 feet perpendicular to the frontage, and along Honey Creek Lane approximately 200 feet perpendicular to the frontage.
- The fence is proposed to be constructed of board-on-board with stone columns.
- Three steel electric gates are proposed with two obstructing the 20-foot visibility triangles by nine feet along River Hill Drive (24-foot-wide gates) and Honey Creek Lane (25-foot-wide double gates).

Staff conducted a field visit of the site and surrounding area and noticed no other fences appear to be constructed above the maximum height of four feet within the front yard setback nor obstruct the required 20-foot visibility triangle at drive approaches.

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

- Whether the proposed fence height would adversely affect the neighboring properties,
- Visibility obstructions items are made on the basis of the item(s) not constituting a traffic hazard, and
- Technical opinions provided from the city engineer.

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

As of May 10, 2022, staff has received nine letters in opposition to the request and no letters in support of the request.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation plan would limit the height of the fence and location within the 20-foot visibility triangle at the private drive approaches adjacent to River Hill Drive and Honey Creek Lane, as shown on the respective plans.

Timeline:

- Feb. 17, 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.
- April 12, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 4, 2022: The Board Senior Planner emailed the representative the following information:
- a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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.”
- April 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Chief Arborist, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.
- May 2, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: May 18, 2022

- APPEARING IN FAVOR:** Jeffery Riddle 17515 River Hill Dr. Dallas, TX
- APPEARING IN OPPOSITION:** None.

MOTION#1: Cannon

I move that the Board of Adjustment, in Appeal No. BDA 212-038, on application of Narayanan Venkatakishnan represented Jeffery Riddle, **deny** the special exception requested by this applicant to construct and/or maintain an eight-foot six-inch high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Karnowski

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

MOTION#2: Cannon

I move that the Board of Adjustment, in Appeal No. BDA 212-038, on application of Narayanan Venkatakishnan represented Jeffery Riddle, **deny** the special exception requested by this applicant to maintain items in the visibility triangle at the drive approach **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Karnowski

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

*****The Board approved a request per the applicant to withdraw this case, therefore deciding to deny without prejudice the prior requests*****

FILE NUMBER: BDA212-042(PD)

BUILDING OFFICIAL’S REPORT: Application of Audra Buckley of Permitted Development, LLC for a variance to construct and maintain a general merchandise or food store 3,500 square feet or less use and provide five of the required 13 off-street parking spaces, which will require an eight-space variance (61.54 percent reduction) to the off-street parking regulations at 2730 N. Henderson Avenue. This property is more fully described as Lot 5 in City Block 8/1973 and is zoned Subdistrict 1 within Planned Development District No. 462 with a D Liquor Control Overlay which requires compliance with off-street parking regulations per the use.

LOCATION: 2730 N. Henderson Avenue

APPLICANT: Audra Buckley of Permitted Development, LLC

REQUEST:

A request for a variance to the off-street parking regulations is made to maintain a general merchandise or food store 3,500 square feet or less use and provide five of the required 13 off-street parking spaces for a property situated along two street frontages and an unimproved alley.

STANDARD FOR A VARIANCE:

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

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

State Law/HB 1475 effective 9-1-21

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

STAFF RECOMMENDATION (off-street parking variance):

Approval.

Rationale:

- The representative provided evidence (**Attachments A & B**) depicting the irregularity in the property. The subject site is triangular in shape and encumbered by two street frontages and an alley. As a result, the site differs from other parcels of land being not only of such a restrictive shape, but also of a restrictive area; so much so that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning. Per the evidence, the property provides a maximum lot area of 5,880 square feet

while a comparative analysis of six properties reflecting an average lot area of 11,476 square feet. Comparably, since the zoning permits a maximum lot coverage of 60 percent, the restrictive lot area of 5,880 square feet, allows a maximum developable area of 3,528 square feet while the six comparative properties allow a maximum of 3,600 square feet, 3,914 square feet, 6,138 square feet, 13,302 square feet, 5,076 square feet, and 9,258 square feet, respectively. Adversely, the evidence reflects that of the 92 permitted uses within the Subdistrict 1 zoning, 22 of these uses deemed compatible to the surrounding residential properties, can never occupy the subject site since the off-street parking ratio requires a greater off-street parking requirement compliance for occupancy. Thus, the subject site cannot be developed in a manner commensurate with the development upon other parcels of land with the same Subdistrict 1 zoning within PDD No. 462.

To assist the board in its decision-making, the Transportation Development Services Senior Engineer reviewed the area of request and information provided by the applicant. While a comment sheet has not been obtained, the Engineer has informed staff that a recommendation of “no objection” will be provided.

BACKGROUND INFORMATION:

Zoning:

Site: Subdistrict 1 within PDD No. 462 with a D Liquor Control Overlay
Northwest: MF-2(A) Multifamily District
North: MF-2(A) Multifamily District
Northeast: CD-15 Conservation District No. 15
East: Subdistrict 1 within PDD No. 462 with a D Liquor Control Overlay
Southeast: Subdistrict 1 within PDD No. 462 with a D Liquor Control Overlay
South: LO-1 Limited Office 1 with a D Liquor Control Overlay
West: MF-2(A) Multifamily District

Land Use:

The subject site is developed with an unoccupied general merchandise or food store 3,500 square feet or less use. The properties to the west, northwest, and north, are developed with multifamily uses; the properties to the northeast and south are developed with single-family uses; the property to the east is developed with a surface parking lot; and the property to the southeast is developed with a retail or personal service use [Paint Nail Bar].

Zoning/BDA History:

There has been one board case in the immediate vicinity within the last five years.

1. **BDA178-080:** On May 21, 2018, the Panel C Board of Adjustment heard a request for Variance to the height regulations at 5230 Alcott Street.

GENERAL FACTS/STAFF ANALYSIS:

A request for a variance to the off-street parking regulations of eight spaces is made to maintain a general merchandise or food store 3,500 square feet or less use and provide five of the required 13 off-street parking spaces on-site. While only one space with an ADA loading space will be provided on-site, the property retains five delta credits from the previous furniture store use. The previous furniture store obtained a certificate of occupancy (CO #8002166509) in 1980 and would have required a parking ratio of one space per 500 square feet of floor area.

Per the parking requirement, the 2,569-square-foot furniture store would have required five off-street parking spaces on-site. However, the site is not conducive to providing the parking requirement. Since the site obtained and operated under the CO, staff deduced that for the property to operate and occupy the building, parking was provided. Therefore, the delta theory which allocates delta credits come into play. Per Sec. 51A-4.704(b)(A), the delta theory falls under the umbrella of changing nonconforming uses. The delta theory maintains that in calculating required off-street parking or loading, the number of nonconforming parking or loading spaces for a use may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner:

Required parking or loading for existing use
- Number of existing parking or loading spaces for existing use
Nonconforming rights as to parking or loading.

Additionally, Subsection (B) states that when a use is converted to a new use having a lesser parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.

Therefore, since the site is now compliant with the one required loading space and providing one off-street parking space with ADA accessible loading space, the property has now lost the delta credit for the loading space and one off-street parking space which ensures that four of the required delta credits remain.

The site is zoned Subdistrict 1 within Planned Development District No. 462, which requires the off-street parking requirements to be provided per Chapter 51A. Accordingly, per Sec. 51A-4.210(b)(24), a general merchandise or food store 3,500 square feet or less use off-street parking requirement is one space per 200 square feet of floor area. Per the requirement, the proposed 2,569-square-foot general merchandise or food store 3,500 square feet or less use requires 12.84 off-street parking spaces. Since a fraction of a space is unobtainable, the .84 is rounded to the nearest whole number. Thereby, 13 off-street parking spaces are required.

The purpose statement for PDD No. 462 provides a purpose statement that reads accordingly:

This article provides standards specifically tailored to meet the needs of the Henderson Avenue Area, between North Central Expressway and Ross Avenue, which is hereby designated as an area of historical, cultural, and architectural importance and significance to the citizens of the City of Dallas. The general objectives of these standards are to promote and protect the health, safety, welfare, convenience, and enjoyment of the public, and, in part, to achieve the following:
(1) Accommodate the existing mix of uses in the area.

- (2) Protect the internal and adjacent stable residential neighborhoods.
- (3) Preserve and enhance the architectural and cultural significance of the area.
- (4) Strengthen neighborhood identity.
- (5) Create a more desirable pedestrian environment.

To achieve a more desirable pedestrian environment, planning principles and theories informs us that, among other things, we should consider developing retail spaces close to neighborhoods, orient buildings to the streets, and place parking behind or below buildings. These principles and theories allow active uses at the street level and promote walkability and safety.

Additionally, due to the irregular triangular shape of the subject site and the parcel being encumbered by two street frontages and an alley, the subject site differs from other parcels of land being of such a restrictive shape that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

The Senior Engineer within the Transportation Development Services Division Department of Transportation has provided a verbal recommendation of “no objection” to the request.

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

- The parking demand generated by the general merchandise or food store 3,500 square feet or less use does not warrant the number of off-street parking spaces required; and,
- The variance of eight spaces (or 61.54 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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 PDD No. 462, Subdistrict 1 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 PDD No. 462, Subdistrict 1 zoning classification.

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

If the board grants the variance to the off-street parking requirements and imposes the submitted site plan as a condition, development would be limited to the number of off-street parking spaces shown on this document rather than the precise location of the off-street parking spaces. Granting these variances will not provide any relief to the Dallas Development Code regulations.

Timeline:

March 10, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents (**Attachment A**) which have been included as part of this case report.

April 12, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 4, 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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.”

April 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Planner, the Board of Adjustment Senior Planner, the Development Services Chief Arborist, the Transportation Services Senior Engineer, and the Assistant City Attorney to the board.

May 2, 2022: The representative provided additional evidence for staff consideration (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: May 18, 2022

APPEARING IN FAVOR: Audra Buckley 1414 Belleview Ste.150 Dallas, TX
Kyle Jacobs 8111 Preston Rd. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 212-042, on application of Audre Buckley of Permitted Development, LLC, **grant** the eight-space variance to the parking regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

FILE NUMBER: BDA212-035(JM)

BUILDING OFFICIAL'S REPORT: Application of Rob Baldwin of Baldwin Associates for a variance to the building height regulations at 1918 Moser Avenue. This property is more fully described as Lot 5, Block C/1491, and is zoned an MF-2(A) Multifamily District, in which the height of an accessory structure may not exceed the height of the main building. The applicant proposes to construct a single-family residential accessory structure with a building height of 23 feet three inches, which will require a two-foot five-inch variance to the maximum building height regulations.

LOCATION: 1918 Moser Avenue

APPLICANT: Rob Baldwin of Baldwin Associates

REQUESTS:

While the site is zoned a Multifamily District, the land use dictates the height of the accessory structure proposed. Section 51A-4.209(6)(vii)(cc) Height of structure accessory to single family use cannot exceed the height of the main structure. In this case, the height of the main structure is 20 feet 10 inches.

STANDARD FOR A VARIANCE:

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

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

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:
 - (k) 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;
 - (l) 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;
 - (m) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (n) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (o) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Denial.

Rationale:

Evidence provided identified 10 single-family uses and structures in the same zoning district and adjacent to the site. The average of the main structure floor area is 3,016 square feet and the

applicant maintains a main structure with 1,908 square feet of floor area. Additionally, of those 10 properties four maintain accessory structures (including the subject site and structure in the request) with an average of 1,382 square feet of floor area. The subject accessory structure is 777 square feet in size. No height data was provided in comparison to the other accessory structures or main structures.

BACKGROUND INFORMATION:

Zoning:

- Site: MF-2(A) Multifamily District
- Northwest: MF-2(A) Multifamily District
- Northeast: Planned Development District No. 462
- Southeast: MF-2(A) Multifamily District
- Southwest: MF-2(A) Multifamily District

Land Use:

The subject site and properties to the northwest and southeast contain single-family uses. Additionally, to the northeast is a commercial use and to the southwest is multifamily.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The applicant proposes to construct a single-family residential accessory structure with a building height of 23 feet three inches, which will require a two-foot five-inch variance to the maximum building height regulations for a single-family accessory structure. The property is zoned an MF-2(A) Multifamily District. In this district, a single-family use is allowed to have accessory structures that cannot exceed the height of the main building. The main structure is 20 feet three inches-in-height.

DCAD records indicate the main structure contains 1,908 square feet of floor area erected in 1923. An accessory structure with a detached garage of 441 square feet and detached quarters with 336 square feet are also identified, however the date of construction is not noted.

The MF-2(A) District allows more than one dwelling unit per lot. While the application and DCAD refer to a second dwelling unit, the floor plan provided as a reference identify the first floor as a garage and the second floor as storage space. In either case, this request is for the height of an accessory structure, solely. A search of City permit records confirms the 2021 building permit for this structure is for a detached garage with storage, not a second dwelling unit. As an accessory structure, the height cannot exceed the height of the main structure.

The property is rectangular in shape, flat, and according to the application, contains 0.2 acres, or approximately 8,500 square feet in area. In an MF-2(A) Multifamily District the minimum lot size varies by use. A single-family use in this district requires a minimum lot size of 1,000 square feet. The evidence provided did not allow for staff to determine whether the subject site 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 district.

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

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

As of May 11, 2022, three letters have been submitted in support and one letter in opposition to the request.

If the board were to grant the variance to the maximum height regulations for structures accessory to a single-family use and impose the submitted site plan and elevation as conditions, the building footprint of the structure on the site and height as identified in the elevation would be limited to what is shown on these documents. However, granting this request will not provide any relief to the Dallas Development Code regulations other than allowing the additional height for the accessory structure, as depicted on the site plan and elevation.

Timeline:

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

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

April 5, 2022: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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.”

April 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board. No review comments were submitted regarding this request.

April 28, 2022: The applicant provided evidence via email (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: May 18, 2022

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

APPEARING IN OPPOSITION: None.

MOTION: **Karnowski**

I move that the Board of Adjustment, in Appeal No. BDA 212-035, **hold** this matter under advisement until **June 22, 2022**.

SECONDED: **Shouse**

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz,

NAYS: 0 -

MOTION PASSED: 4 - 0 (unanimously)

**** The 1st motion was withdrawn to Grant****

Board member, Joe Cannon recused himself from case BDA212-035 due to conflict of interest

FILE NUMBER: BDA212-033(JM)

BUILDING OFFICIAL’S REPORT: Application of Mehrdad Ghani for a variance to the front yard setback regulations at 10001 Meadowbrook Drive. This property is more fully described as Tract 8, Block 5517, and is zoned an R-1ac(A) Single Family District, which requires a front yard setback of 40 feet.

LOCATION: 10001 Meadowbrook Drive

APPLICANT: Mehrdad Ghani

REQUESTS: The applicant proposes to construct a single-family residential structure and provide a 17-foot six-inch front yard setback along Walnut Hill Lane, which will require a 22-foot six-inch variance to the front yard setback regulations, and to construct a single-family residential structure and provide a 31-foot front yard setback along Meadowbrook Drive, which will require a nine-foot variance to the front yard setback regulations.

UPDATES:

The applicant provided a revised plan and staff issued a revised BO report.

STANDARD FOR A VARIANCE:

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

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

State Law/HB 1475 effective 9-1-21

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

- (e) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval.

Rationale:

- While the site is unique due to being encumbered by a second front yard setback requirement, block continuity requiring an additional 10 feet along Walnut Hill Lane, and a 15-foot street easement for Walnut Hill Lane, making the second front yard 65 feet and leaving the property with a developable width of 56 feet after the 10-foot side yard setback is also taken into account.
- Furthermore, the property has a flood plain and topographical challenges on over 50 percent of the site making siting of the proposed structure difficult.
- The applicant compared how the 1.034-acre site with the proposed 10,692-square-foot structure is commensurate with the development upon three parcels with the same zoning and in the immediate vicinity.
 1. Average lot size: just over one acre
 2. Average home size: 9,648 square feet

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

While there is a nearby case BDA212-022 east of the site and on this month's agenda for Panel C, it pertains to a fence and not front yard setback variance. There has been no relevant board or zoning case history in the vicinity within the last five years.

Additionally, the subject site was granted variances to the front yard setback by Panel A on May 19, 2015 (BDA145-056), surpassing the five-year rule for returning to the same panel (Sec.51A-3.102(b) Case assignments). The board shall adopt rules for the assignment of cases to a panel. Only one panel may hear, handle, or render a decision in a particular case. If a case is dismissed or withdrawn and subsequently refiled within five years of the date the original case was dismissed or withdrawn, it must be returned to the panel to which it was originally assigned.

GENERAL FACTS/STAFF ANALYSIS

The subject site is zoned an R-1ac(A) Single Family District, which requires a 40-foot front yard. Corner lots in single family districts with frontage on two streets where one frontage is shorter than the other allow the longer frontage to be governed by the side yard regulations. However, if another structure has an established setback along the block face of the longer frontage, that side must maintain a front yard free from structures for block continuity. In this case, the district requires two 40-foot front yards, due to the orientation of properties to the west along Walnut Hill Road.

The applicant proposes to construct a single-family residential structure and provide a 17-foot six-inch front yard setback along Walnut Hill Lane, which will require a 22-foot six-inch variance to the front yard setback regulations, and to construct a single-family residential structure and provide a 31-foot front yard setback along Meadowbrook Drive, which will require a nine-foot variance to the front yard setback regulations.

Lots in this district are a minimum of one acre or 43,560 square feet in area. According to DCAD records, the subject site contains just under an acre or 39,509 square feet of area. Additionally, the lot is encumbered with a second front yard. Finally, the site has a creek and flood plain running through it, making more than 50 percent of the lot sloped and impossible to develop.

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

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

On May 6, 2022, the applicant submitted a revised site plan to denote an additional setback discovered by staff on the property adjacent to the east (revised BO report is **Attachment B**). A platted build line on the neighboring property is dictating an additional 10-foot setback along Walnut Hill Lane. While platted build lines cannot be varied by the Board, the line is not on the subject site. The applicant is being held to a different front yard provision requiring block continuity. This can be varied. The revised site plan (**Attachment C**) also removed the steps located along Meadowbrook Drive, now depicting no encroachments in this 40-foot front yard.

As of May 10, 2022, a petition in opposition and no letters in support have been received.

If the board were to grant the variance request and impose the submitted site plan as a condition, the proposed structure located within the front yard setbacks for each front yard would be limited to what is shown on this document. No additional relief is provided with this request.

TIMELINE:

February 11, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

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

March 15, 2022: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional

evidence for staff to factor into their analysis; and the April 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board

April 13, 2022: No evidence, staff review comments, or letters had been received.

April 19, 2022: The applicant provided evidence via email (**Attachment A**).

April 20, 2022: At the request of the applicant, Panel B held this case to May 18, 2022 to allow coordination with neighborhood opposition.

May 5, 2022: Staff decided that due to block continuity from the east (50-foot platted build line along Walnut Hill Lane), the request needed to be amended to add the additional 10 feet required along Walnut Hill Lane (**Attachment B**).

May 6, 2022: The applicant provided a revised site plan (**Attachment C**) removing the encroachments into the Meadowbrook Drive front yard, and showing the additional setback for block continuity along Walnut Hill Lane (no building changes).

BOARD OF ADJUSTMENT ACTION: April 20, 2022

APPEARING IN FAVOR: Mike Ghani 10001 Meadowbrook Dr. Dallas, TX
Rona Ghani 10001 Meadowbrook Dr. Dallas, TX

APPEARING IN OPPOSITION: Nancy Sanders 10025 Meadowbrook Dr. Dallas, TX

MOTION: Cannon

I move that the Board of Adjustment, in Appeal No. BDA 212-033, hold this matter under advisement until May 18, 2022.

SECONDED: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: May 18, 2022

APPEARING IN FAVOR: Mike Ghani 10001 Meadowbrook Dr. Dallas, TX

APPEARING IN OPPOSITION:

MOTION#1: Cannon

I move that the Board of Adjustment, in Appeal No. BDA 212-033, on application of Mehrdad Ghani, **GRANT** the 32-foot six-inch variance to the front yard setback regulations along Walnut Hill Lane as 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: Karnowski

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

MOTION#2: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 212-033, on application of Mehrdad Ghani, **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: Cannon

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

FILE NUMBER: BDA212-036(JM)

BUILDING OFFICIAL'S REPORT: Application of Rob Baldwin for a variance to the front yard setback regulations at 1000 Fort Worth Avenue. This property is more fully described as Lot 3A, Block 19/3980, and is zoned Subarea 2B within Planned Development District No. 716, which requires a front yard setback of 60 feet.

LOCATION: 1000 Fort Worth Avenue

APPLICANT: Rob Baldwin, Baldwin and Associates

REQUESTS: The applicant proposes to construct a multi-family structure and provide a 142-foot front yard setback, which will require an 82-foot variance to the front setback regulations.

UPDATE: No updates 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:

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

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (f) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (g) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;

- (h) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (i) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (j) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Denial.

Rationale:

- Staff concluded that the subject site is unique since the property is sloped, irregular in shape, and burdened by a front yard min/max setback that lacks a provision for driveways/pedestrian access via allowing a percentage or average. However, staff could not determine whether it is different from other parcels with the same zoning of Subdistrict 2 within Planned Development District No. 714.
- Evidence submitted by the applicant (**Attachment A**) identified not only the irregular shape and slope of the site, but additionally an abandoned right-of-way that still maintains functioning utility easements which would be cost prohibitive to relocate, creating an unnecessary hardship.
- Additionally, the utility easements are within portions of the front yard setback zone. Structures cannot be constructed on top of utility easements making compliance with the ordinance impossible or making the structures proposed noncompliant with other regulations while encroaching onto the easement.
- Ultimately, the applicant failed to provide evidence showing how the proposed development is commensurate with the development upon other parcels with the same zoning.
- If a list were to be provided, staff would support this request with the recommendation being subject to the submitted site plan.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS

The subject site is zoned is zoned Subarea 2B within Planned Development District No. 716. The PD dictates how structures must be located within the front yard setback range of 15 to 60 feet with no consideration of driveways and pedestrian access points. Therefore, while the proposed development is urban in nature, pulling a vast majority (70 percent) of the structures into the front yard setback area, the driveways ultimately cause the development to fail the compliance test, as measurements are taken to the nearest structures. The request for a variance of up to 82 feet is specifically for those areas with structures up to 142 feet away from the front lot line.

The property contains 8.78 acres, is slopped, irregular in shape, and contains an abandoned right-of-way that still maintains functioning utility easements.

According to the site plan submitted with the request:

- The abandoned Winnetka Avenue section maintains a utility easement which must remain free of structures.
- The site is being developed with a mixed use multifamily and retail development with 32 overall structures.
- The property has 1,314 feet of frontage along Fort Worth Avenue; about 140 feet of frontage along Clinton Avenue; and, 1,290 feet of lower frontage (no direct access) along I-30 Freeway.

Compliance with the min/max front yard setback would cause the structures proposed to sit atop of active utility easements, which is not allowed. The applicant states it would be cost prohibitive to relocate these utilities and cause an encroachment onto the easement, creating an unnecessary hardship; however, no estimate was provided.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The 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 Subarea 2B within Planned Development District No. 716 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 Subarea 2B within Planned Development District No. 716 zoning classification.

As of May 11, 2022, no letters have been submitted regarding this request.

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

TIMELINE:

- February 15, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 15, 2022: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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 30, 2022: The applicant submitted additional evidence for consideration (**Attachment A**).
- March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board

April 20, 2022: As requested by the applicant, Panel B held this case over to May 18, 2022.

May 6, 2022: No new evidence or letters were provided by the docket deadline.

BOARD OF ADJUSTMENT ACTION: April 20, 2022

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

APPEARING IN OPPOSITION: Javier Melendez 3632 Rialto Way Dallas, TX

MOTION: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 212-036, hold this matter under advisement until May 18, 2022.

SECONDED: Shouse

AYES: 4 – Shouse, Karnowski, Gambow, Resendiz

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: May 18, 2022

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

APPEARING IN OPPOSITION: None.

MOTION: **Karnowski**

I move that the Board of Adjustment, in Appeal No. BDA 212-036, on application of Rob Baldwin, **grant** the 82-foot variance to the front yard setback regulations as 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: **Resendiz**

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

MOTION: **Gambow**

I move to adjourn the Panel B hearing.

SECONDED: **Karnowski**

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

The meeting was adjourned at 2:20 P.M. on May 18, 2022.

Cheri Vanden

CHAIRPERSON signed 6-22-22

[Signature]

BOARD ADMINISTRATOR

[Signature]

BOARD SECRETARY

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