

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, May 20, 2019**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, chair, Matt Shouse, regular member, Judy Pollock, regular member, Lorlee Bartos, alternate member and Nicholas Brooks, alternate member

MEMBERS ABSENT FROM BRIEFING: Robert Agnich, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, chair, Matt Shouse, regular member, Judy Pollock, regular member, Lorlee Bartos, alternate member and Nicholas Brooks, alternate member

MEMBERS ABSENT FROM HEARING: Robert Agnich, regular member

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

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

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**11:12 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's May 20, 2019 docket.

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**1:16 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, April 15, 2019 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: May 20, 2019**

MOTION: None

The minutes were approved without a formal vote.

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**FILE NUMBER:** BDA189-058(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Karl A. Crawley for a special exception to the minimum front yard setback requirements to preserve an existing tree at 10040 Hollow Way Road. This property is more fully described as Lot 2A, Block 1/5517, and is zoned R-1ac(A), which requires a front yard setback of 40 feet. The applicant proposes to construct and/or maintain a structure and provide a 15 foot front yard setback, which will require a 25-foot special exception to the front yard setback regulations.

**LOCATION:** 10040 Hollow Way Road

**APPLICANT:** Karl A. Crawley

**REQUEST:**

A request for a special exception to the minimum front yard requirements to preserve existing trees of 25’ is made to construct/maintain a “gate house” structure to be located 15’ from the front property line or 25’ into this 40’ front yard setback on a site being developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO THE MINIMUM FRONT YARD REQUIREMENTS TO PRESERVE AN EXISTING TREE:**

Section 51(A)-4.401(d) of the Dallas Development Code specifies that the board may grant a special exception to the minimum front yard requirements in this section to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that requested special exception was compatible with the character of the neighborhood; the value of surrounding properties will not be adversely affected; and that, according to the City of Dallas Chief Arborist, at least one tree denoted on the submitted site plan, is worthy of preservation.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

1. BDA189-024, Property at 10040 Hollow Way Road (the subject site)
 

On February 21, 2019, the Board of Adjustment Panel A granted a request for a special exception to the fence regulations of 2’ 8” : Compliance with submitted site plan and elevation was required and denied a request for a variance to the front yard setback regulations without prejudice. The case report stated the special exception to the fence standards was made to construct and maintain a fence higher than 4’ in height in the front yard setback (a 6’ high chain-link fence with 6’ 8” high brick columns, two 6’ high metal rolling gates, a 6’ 6’ high metal louvered fence with 6’ 8” high brick columns and a 6’ high pedestrian electronic steel gate) and variance request to the front yard setback regulations was made to construct/maintain a “gate house” structure to be located 7’ 3” from the front property line or 32’ 9” into this 40’ front yard setback .

2. BDA056-090, Property at 10058 Hollow Way Road (the lot north to the subject site)

On March 14, 2006, the Board of Adjustment Panel A granted requests for a special exception to the fence regulations of 5' 7": Compliance with submitted revised site plan and revised fence elevation was required.

The case report stated the special exception to the fence standards was made to construct and maintain an 8' 4" high open wrought iron fence (atop an approximately 1' 5" limestone base), with 9' 7" high limestone columns in the 40' Hollow Way Road front yard setback.

3. BDA990-297, Property at 10058 Hollow Way Road (the lot north to the subject site)

On June 27, 2000, the Board of Adjustment Panel A denied a request for a special exception to the fence height regulations of 5' 7" with prejudice and denied a special exception to the single-family regulations for an additional dwelling unit without prejudice. The case report states that the fence special exception was requested in conjunction with constructing and maintaining an 8' high combination limestone/wrought iron fence and that the single-family special exception was requested in conjunction with maintaining an approximately 576 square foot, 1-story "guest house"/ dwelling unit.

4. BDA88-009, Property at 10023 Hollow Way Road (The lot southwest to the subject site)

On December 12, 1988, the Board of Adjustment granted a 4' rear yard setback variance and a 1' side yard setback variance to maintain a garage structure located on the south of the property.

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

- This request for a special exception to the minimum front yard requirements to preserve existing trees of 25' focuses on constructing and maintaining a "gate house" structure to be located 15' from the front property line or 25' into this 40' front yard setback on a site being developed with a single family home.
- The subject site is zoned R-1ac (A) which requires a 40' front yard setback.

- The submitted plan represents that a “gate house” structure is proposed to be located as close as 15’ from the site’s front property line or 25’ into the 40’ front yard setback and several trees within the site.
- The City of Dallas Chief Arborist has stated the following in a November 28<sup>th</sup> email: “The question before me on this case is whether or not one or more of the trees on the home site is worthy of preservation. The applicant has represented in the exhibit that if the combined fence, accessory structure, and driveway, was applied in accordance with the required setback and according to a conceptual design, five existing trees would require removal. The item listed in the application is the residential accessory building and I will address the one tree in proximity of the proposed structure if constructed within the setback. The magnolia tree in question is worthy of preservation. The tree which was previously alongside a driveway (to the south) has been relatively protected from heavy construction activity. It is uncertain the tree would be compromised due to the location of the accessory building at the setback line, but the tree would likely be required to be removed based on the estimated location of a fence at the building setback line. The combined fence and structure function would impose a removal of the tree”.
- The applicant has the burden of proof in establishing the following:
  - Whether the requested special exception is compatible with the character of the neighborhood.
  - Whether the value of surrounding properties will be adversely affected.
  - Whether the tree is worthy of preservation.
- If the Board were to grant the special exception request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document – which in this case is a structure that is located 15’ from the site’s side property line or 25’ into this 40’ side yard setback.

**Timeline:**

- March 21, 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.
- April 8, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.
- April 10, 2019: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;

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

April 30, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

May 7, 2019: 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 Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

May 9, 2019: The City of Dallas Chief Arborist emailed the Board Administrator information regarding this application (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: May 20, 2019**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Bartos**

I move that the Board of Adjustment, in Appeal No. BDA 189-058, on application of Karl A. Crawley of Masterplan, for a special exception to the minimum front yard setback requirements to preserve an existing tree as contained in the Dallas Development Code, as amended, is **granted**, subject to the following condition:

- Compliance with the submitted site plan is required.

**SECOND: Pollock**

AYES: 5 – Richardson, Shouse, Pollock, Bartos, Brooks

NAYS: 0 –

MOTION PASSED: 5 – 0 (Unanimously)

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**FILE NUMBER: BDA189-059(OA)**

**BUILDING OFFICIAL'S REPORT:** Application of Sharmarr Singleton of TSG Construction for a special exception to the off-street parking regulations at 1949 N. Stemmons Freeway. This property is more fully described as a Tract of land, Block 1/1001, and is zoned MU-3, which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for a hotel use, and provide 132 of the required 146 parking spaces, which will require a 14 space special exception to the off-street parking regulations.

**LOCATION:** 1949 N. Stemmons Freeway

**APPLICANT:** Sharmarr Singleton of TSG Construction

**REQUEST:**

A request for a special exception to the off-street parking regulations of 14 spaces is made to convert an existing vacant office structure to a 146 room hotel structure and provide 132 of the 146 off-street parking spaces required by code.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

Section 51A-4.311 of the Dallas Development Code states the following:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

- (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
  - 4) In granting a special exception, the board may:
    - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
    - (B) Impose restrictions on access to or from the subject property; or
    - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
  - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
  - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
    - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
    - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception of 14 spaces shall automatically and immediately terminate if and when the hotel use is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Senior Engineer indicated that he has no objections to this request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: MU-3 (Mixed use district 3)  
North: MU-3 (Mixed use district 3)

South: PD 621 (Planned Development)  
East: PD 621 (Planned Development)  
West: MU-3 (Mixed use district 3)

**Land Use:**

The subject site is being developed with a 146-room hotel structure. The area to the north is developed with ROW (Stemmons Freeway) use; and the areas to the east, west, south are developed with industrial and commercial uses.

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the off-street parking regulations of 14 spaces focuses on converting an existing vacant office structure to a 146-room hotel structure and provide 132 of the 146 off-street parking spaces required by code.
- Chapter 51A-4.205(1) (C) requires the following off-street parking requirement:
  - Hotel: one space for each unit for units 1 to 250; ¾ spaces for each unit 251 to 500; ½ space for all units over 500; plus, one space per 200 square feet of meeting room.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed hotel use does not warrant the number of off-street parking spaces required, and
  - The special exception of 14 spaces (or a 9 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request and impose the condition that the special exception of 14 spaces shall automatically and immediately terminate if and when the hotel use is changed or discontinued, the applicant could remodel and maintain the hotel use on the site and provide 132 of the 146 required off-street parking spaces.

**Timeline:**

March 21, 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.

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

April 10, 2019: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the May 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 10<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."

May 7, 2019: 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 Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

May 9, 2019: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Has no objections".

**BOARD OF ADJUSTMENT ACTION: May 20, 2019**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move that the Board of Adjustment, in Appeal No. BDA 189-059, on application of Sharmarr Singleton of TSG Construction, for a special exception to the parking regulations contained in the Dallas Development Code, as amended, is **granted**, subject to the following condition:

- The special exception of 14 spaces shall automatically and immediately terminate if and when the hotel or motel use is changed or discontinued.

SECOND: **Pollock**

AYES: 5 – Richardson, Shouse, Pollock, Bartos, Brooks

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA189-060(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Chris D. Lovick, Jr. for a special exception to the single family use regulations at 2634 Al Lipscomb Way. This property is more fully described as Lot 9, Block 4/1285, and is zoned PD-595 (MF-2-A), which limits the number of dwelling units to one. The applicant proposes to construct and/or maintain an additional dwelling unit, which will require a special exception to the single family use regulations.

**LOCATION:** 2634 Al Lipscomb Way

**APPLICANT:** Chris D. Lovick, Jr.

**REQUESTS:**

A request for a special exception to the single family use regulations is made to construct and maintain a one-story additional “dwelling unit” structure on a site that is being developed with a 3-story main single-family home/dwelling unit structure.

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

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

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 595 (MF-2(A)) (Planned Development) (Multi-family)

North: PD 595 (MF-2(A)) (Planned Development) (Multi-family) & PD 871 (Planned Development)  
South: PD 595 (Planned Development)  
East: PD 595 (MF-2(A)) (Planned Development) (Multi-family) & PD 595 (Planned Development)  
West: PD 595 (MF-2(A)) (Planned Development) (Multi-family) & PD 871 (Planned Development)

**Land Use:**

The subject site is undeveloped. The areas to the south, east, and west are developed with vacant lots, single-family homes, and multifamily uses; and the area to the north is developed with a public school use

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the single-family use regulations focuses on constructing and maintaining a 1-story “additional dwelling unit” structure on a site that is undeveloped.
- The site is zoned PD 595 (MF-2(A)) where the Dallas Development Code permits multifamily residential uses in combination on single or contiguous building sites per lot.
- The residential use regulations of the Dallas Development Code defines a duplex as two dwelling units located on a lot and limits the duplex to only one main building per lot.
- The residential use regulations of the Dallas Development Code defines multifamily as three or more dwelling units located on a lot.
- The submitted site plan for this application denotes the locations of two building footprints for two separate dwelling units. Since the proposal does not meet the residential use regulations of the Dallas Development Code for a duplex or/and multifamily uses, Building Inspection has determined this proposal should be considered as a single-family structure with an additional dwelling unit.
- The Dallas Development Code states that the board of adjustment may grant a special exception to authorize an additional dwelling unit in any district when, in the opinion of the board, the special exception will not: 1) be used as a rental accommodation; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- The Dallas Development Code defines “kitchen” as “any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or

microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities.”

- The Dallas Development Code defines “bathroom” as “any room used for personal hygiene and containing a shower or bathtub or containing a toilet and sink.”
- The Dallas Development Code defines “bedroom” as “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sun rooms, and other similar rooms are considered bedrooms.”
- The submitted site plan denotes the locations of two building footprints, the larger of the two to be the proposed 3-story single family main structure and the proposed additional dwelling unit denoted as “accessory unit”.
- The submitted floor plan of what appears to be the “accessory unit” denoted on the site plan shows a number of rooms/features that Building Inspection has determined makes it an additional dwelling unit - that is per Code definition: “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms”.
- This request centers on the function of what is proposed to be inside the smaller structure on the site – the “accessory unit” structure, specifically its collection of rooms/features shown on the floor plan.
- The application states a request has been made for: “the proposed accessory unit will be multifunctional and would be used for hygiene, sleeping accommodations, and social functions in concert with pool and spa use for family members and friends”.
- According to DCAD records, there are “no main improvement” or “no additional improvements” for property addressed at 2634 Al Lipscomb Way.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve this request, the Board may choose to impose a condition that the applicant complies with the site plan if they feel it is necessary to ensure that the special exception will not adversely affect neighboring properties. But granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.
- If the Board were to grant this request, Building Inspection would view the structure denoted on the submitted site plan as “accessory unit” as an additional “dwelling unit”.

### **Timeline:**

February 21, 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.

- April 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 9, 2019: 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 May 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 10<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."
- May 7, 2019: 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 Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.
- March 7, 2019: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).
- March 18, 2019: The Board of Adjustment Panel C conducted a public hearing on this application, and delayed action on this application per applicant's request until the next public hearing to be held on April 15, 2019.
- March 20, 2019: The Board Administrator wrote the applicant a letter of the board's action; the March 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.
- March 29, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

April 2, 2019: 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 Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: May 20, 2019**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Bartos**

I move that the Board of Adjustment, in Appeal No. BDA 189-060, on application of Chris Lovick, Jr., to construct and maintain an additional dwelling unit as a special exception to the single-family zoning use regulations contained in the Dallas Development Code, as amended, is **granted**, subject to the following condition:

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

**SECOND: Pollock**

**AYES: 5 – Richardson, Shouse, Pollock, Bartos, Brooks**

**NAYS: 0**

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

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**FILE NUMBER: BDA189-061(OA)**

**BUILDING OFFICIAL’S REPORT:** Application of Jack Tarrer for a special exception to the fence standards regulations at 3313 E. Illinois Avenue. This property is more fully described as Lot 29 & 30, Block H/6094, and is zoned CS, which prohibits the use of certain materials for a fence. The applicant proposes to construct and/or maintain a fence of a prohibited material, which will require a special exception to the fence standards regulations.

**LOCATION:** 3313 E. Illinois Avenue

**APPLICANT:** Jack Tarrer

**REQUEST:**

A request for a special exception to the fence standards regulations is made to complete and maintain a fence of a prohibited fence material (sheet metal) on a site developed with vehicle display, sales, or service use.

**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: CS (Commercial service district)  
North: R-5 (A) (Single family residential 5,000 square feet)  
South: CS (Commercial service district)  
East: CS (Commercial service district) & R-5 (A) (Single family residential 5,000 square feet)  
West: CS (Commercial service district) & R-5 (A) (Single family residential 5,000 square feet)

**Land Use:**

The subject site is developed with a vehicle display, sales, or service use. The area to the north is developed with vacant lots and single-family uses; the area to the south is developed with commercial service uses; the area to the west is developed with vacant lots and commercial service uses; and the area to the east is developed with single-family and multi-family uses.

**Zoning/BDA History:**

There have not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

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

- The request for a special exception to the fence standards regulations related to fence materials focuses on completing and maintaining a fence of a prohibited fence material (R-Panel) on a site developed with vehicle display, sales, or service use.
- Section 51A-4.602(a)(9) of the Dallas Development Code states that except as provided in this subsection, the following fence materials are prohibited:
  - Sheet metal;
  - Corrugated metal;
  - Fiberglass panels;
  - Plywood;
  - Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
  - Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and
  - Barbed wire razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.
- The applicant has submitted a site plan and elevation that represents the location of the proposed and existing sheet metal fence on the property.
- The submitted elevation represents an 8' high sheet metal fence.
- The submitted site plan represents a site that is approximately 22,800 square feet in area where approximately 632 linear feet of prohibited fence material (sheet metal fence) is located on this property.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area. Similar fences that appeared to be made of similar prohibited material were noted to the west, east and north of the subject site. These similar existing fences have no recorded BDA history.
- As of May 10, 2019, no letters have been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to a prohibited fence material (sheet metal) will not adversely affect neighboring property.
- If the Board were to grant the special exception and impose the submitted site plan and elevation as a condition, the fence of prohibited material on the property would be limited to what is shown on these documents.

## **Timeline:**

- March 22, 2019: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 8, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

April 10, 2019: The Sustainable Development and Construction Department 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 May 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 10<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.”

May 7, 2019: 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 Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: May 20, 2019**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move that the Board of Adjustment, in Appeal No. BDA 189-061, on application of Jack Tarrer, to construct and/or maintain a fence of prohibited material as a special exception to the materials requirements for fences contained in the Dallas Development Code, as amended, is **granted**, subject to the following condition:

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

SECOND: **Pollock**

AYES: 5 – Richardson, Shouse, Pollock, Bartos, Brooks

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA189-056(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Jorge Abrev for special exceptions to the fence standards regulations at 4223 Briar Creek Lane. This property is more fully described as Lot 13, Block G/2956, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and/or maintain a 7 foot high fence in a required front yard, which will require a 3 foot special exception to the fence standards regulations, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations.

**LOCATION:** 4223 Briar Creek Lane

**APPLICANT:** Jorge Abrev

**REQUESTS:**

The following requests have been made on a site that is developed with a single-family home:

1. A request for a special exception to the fence standards regulations related to the fence height of 3’ is made to construct and maintain a fence higher than 4’ in height in both front yard setbacks:
  - a) Along Briar Creek Lane: – a 7’ solid wood fence; and
  - b) Along St. Moritz Avenue: – a 7’ solid wood fence.
2. A request for a special exception to the fence standards regulations related to fence panels with a surface area that is less than 50 percent open less than 5’ from the front lot line, is made to construct and maintain the aforementioned 7’ high solid wood fence along St. Moritz Avenue located less than 5’ from this front lot line.

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

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

**STAFF RECOMMENDATION:**

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

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) (Single family district 7,500 square feet)  
South: D (A) (Duplex district)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-7.5(A) (Single family district 7,500 square feet) & D (A) (Duplex district)

### **Land Use:**

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

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

There have not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

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

- The requests for special exceptions to the fence standards regulations on a site developed with a single-family home focus on:
  1. constructing/maintaining a 7' solid wood fence in one of the site's two required front yards (Briar Creek Lane);
  2. constructing/maintaining a 7' solid wood fence in one of the site's two required front yards (St. Moritz Avenue);
  3. constructing/maintaining the aforementioned 7' solid wood fence along Moritz Avenue located less than 5' from this front lot line.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The Dallas Development Code states that no fence panel having less than 50 percent open surface area may be located less than five feet from the front lot line.
- The subject site is zoned R-7.5(A) which requires a 25' front yard setback.
- The site is located at the southeast corner of Briar Creek Lane and Moritz Avenue.
- Given the single-family zoning and location of the corner lot, the subject site has two required front yards. The site has a 30' required front yard caused by a platted building line along Briar Creek Lane and a 20' required front yard along Moritz Avenue.
- The applicant has submitted a site plan and elevation of the proposal along Briar Creek Lane and Moritz Avenue that shows the proposal in these front yard setbacks reaching a maximum height of 7' and with fence panels having a surface area less than 50 percent open less than 5' from the front lot line along Moritz Avenue.
- The following additional information was gleaned from the submitted site plan:

- Along Briar Creek Lane: the proposal is represented as being approximately 31' in length parallel to the street and approximately 30' perpendicular to the street on the northeast and northwest side of the site on this required front yard; located approximately 26' from the front property line or approximately 36' from the pavement line.
- Along Moritz Avenue: the proposal is represented as being approximately 42' in length parallel to the street and approximately 18' perpendicular to the street on the southwest and northwest side of the site on this required front yard; located approximately at the front property line or approximately 20' from the pavement line.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and the surrounding area approximately 400 feet north, south, east, and west of the site and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of May 10, 2019, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height 3' in these front yard setbacks and related to a fence with panels with surface areas less than 50 percent open less than 5' from the front lot line along Moritz Avenue will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 3' in height in the front yard setbacks and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line along Moritz Avenue to be maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

- February 12, 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.
- April 9, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 10, 2019: The Sustainable Development and Construction Department 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 May 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 10<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.”

May 7, 2019:

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 Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: May 20, 2019**

APPEARING IN FAVOR: Nathan Russo, 4223 Briar Creek Lane, Dallas, TX  
Troy Neaville, 4223 Briar Creek Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Shouse**

I move that the Board of Adjustment, in Appeal No. BDA 189-056, on application of Jorge Abrev, **grant** the request of this applicant to construct and/or maintain a seven - foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

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

**SECOND: Pollock**

AYES: 5 – Richardson, Shouse, Pollock, Bartos, Brooks

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

**MOTION #2: Shouse**

I move that the Board of Adjustment, in Appeal No. BDA 189-056, on application of Jorge Abrev, **grant** the request of this applicant to construct and/or maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as a special exception to the surface area openness requirement for fences contained in the Dallas Development Code, 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.

**SECOND: Bartos**

**AYES:** 5 – Richardson, Shouse, Pollock, Bartos, Brooks

**NAYS:** 0

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

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**FILE NUMBER:** BDA189-038(OA)

**BUILDING OFFICIAL'S REPORT:** Application of James White III, represented by Michael R. Coker Company, for a variance to the front yard setback regulations, special exceptions to the fence standards regulations, and special exceptions to the visual obstruction regulations at 11534 Hillcrest Road. This property is more fully described as Lot 1 and PT LT 2 and 4, Block C/7494, and is zoned R-16(A), requires a front yard setback of 35 feet, limits the height of a fence in the front yard to 4 feet, limits the height of a fence in the side or rear yard to 9 feet, and requires a 45 foot visibility triangle at street intersections and 20 foot visibility triangles at driveway approaches. The applicant proposes to construct and/or maintain a structure and provide a 32 foot 9 inch front yard setback, which will require a 2 foot 3 inch variance to the front yard setback regulations, to construct and/or maintain a 9 foot 6 inch fence in a front, side, and/or rear yard which will require a 5 foot 6 inch special exception to the fence standards regulations for a fence in the front yard setback, and a 6 inch special exception to the fence standards regulations for a fence in the side and/or rear yard, and to locate and maintain items in required visibility triangles at a street intersection and at driveway approaches which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 11534 Hillcrest Road

**APPLICANT:** James White III  
Represented by Michael R. Coker Company

**ORIGINAL APRIL 15, 2019 REQUESTS:**

The following requests had been made on a site that is developed with a single-family home:

2. a variance to the front yard setback regulations of 2' 3" was made to maintain a single-family structure located 32' 9" from one of the site's two required front yards (N. Janmar Drive) or 2' 3" into this 35' front yard setback;
3. special exceptions to the fence standards regulations related to fence height of 5' 6" was made to maintain a fence higher than 4' in height in both front yard setbacks:
  - c) Along N. Janmar Drive: – an 8' solid wood fence, a 5' 6" to 6' decorative wrought iron fence with 6' high stone masonry columns, a portion of which sits atop a 0' to 3' retaining wall and a 7' 6' motorized wrought iron gate; and
  - d) Along Hillcrest Road: – a 5' 6" to 6' decorative wrought iron fence with 6' high stone masonry columns and a 7' 6' motorized wrought iron gate of which sits atop a 2' to 3' retaining wall.
4. special exceptions to the fence standards regulations related to fence height of 5" were made to maintain a 9' 5" in height solid wood fence in the required side yard setbacks; and
5. special exceptions to the visual obstruction regulations were made to maintain:
  - a) portions of a 6' high stone masonry column and landscape materials in the 45' visibility triangle at the intersection of Hillcrest Road and Janmar Drive;
  - b) portions of a 6' high stone masonry columns that sit atop a 0' to 3' retaining wall in one of the two 20' visibility triangles located on the west side of the driveway into the site from N. Janmar Drive.
  - c) portions of a 6' high stone masonry column and portion a retaining wall in one of the two 20' visibility triangles located on the north side of the driveway into the site from Hillcrest Road.
  - d) portions of a retaining wall in one of the two 20' visibility triangles located on the south side of the driveway into the site from Hillcrest Road.

#### **REVISED MAY 20, 2019 REQUESTS:**

On May 7, 2019 , the applicant submitted a revised documents (see Attachment D). As a result. The following requests have been made on a site that is developed with a single-family home:

1. a variance to the front yard setback regulations of 2' 3" is made to maintain a single-family structure located 32' 9" from one of the site's two required front yards (N. Janmar Drive) or 2' 3" into this 35' front yard setback;
2. special exceptions to the fence standards regulations related to fence height of 5' 6" is made to maintain a fence higher than 4' in height in both front yard setbacks:
  - a) Along N. Janmar Drive: – an 8' solid wood fence, a 5' 6" to 6' decorative wrought iron fence with 6' high stone masonry columns, a portion of which sits atop a 0' to 3' retaining wall and a 7' 6' motorized wrought iron gate; and
  - b) Along Hillcrest Road: – a 5' 6" to 6' decorative wrought iron fence with 6' high stone masonry columns and a 7' 6' motorized wrought iron gate of which sits atop a 2' to 3' retaining wall.
3. special exceptions to the visual obstruction regulations are made to maintain:

- a) portions of a 6' high stone masonry column and portion a retaining wall in one of the two 20' visibility triangles located on the north side of the driveway into the site from Hillcrest Road.
- b) portions of a retaining wall in one of the two 20' visibility triangles located on the south side of the driveway into the site from Hillcrest Road.

(Note that the original requests for a special exception to the fence standards regulations related to fence height in the required side yard, the special exception to the visual obstruction regulations related to the 45' visibility triangle at the intersection of Hillcrest Road and Janmar Drive, and the 20' visibility triangles located on the west side of the driveway into the site from N. Janmar Drive are no longer necessary due to the applicant amending his request on May 2<sup>nd</sup>. On May 7, 2019, the applicant submitted a revised site plan (Attachment D)).

**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.

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

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

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

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

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

Denial.

Rationale:

- Staff concluded that the applicant had not substantiated how the variance is necessary to permit development of the subject site that is slightly sloped, slightly irregular in shape but according to the submitted application is 0.816 acres (or approximately 38,150 square feet or twice the area found in most lots in this zoning district) where these features preclude it from being developed in a manner commensurate with the development upon other parcels of land with the same R-16(A) zoning district.

**STAFF RECOMMENDATION (fence standards):**

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.

**STAFF RECOMMENDATION (20' visibility triangles at the driveways):**

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests.
- Staff concluded that the request for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the item located in the visibility triangles do not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16 (A) (Single family district 16,000 square feet)  
North: R-16 (A) (Single family district 16,000 square feet)  
South: R-16 (A) (Single family district 16,000 square feet)  
East: R-16 (A) (Single family district 16,000 square feet)  
West: R-16 (A) (Single family district 16,000 square feet)

**Land Use:**

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

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

**GENERAL FACTS/STAFF ANALYSIS (front yard variance):**

- The request for a variance to the front yard setback regulations of 2' 3" focuses on maintaining a single-family structure located 32' 9" from one of the site's two required front yards (N. Janmar Drive) or 2' 3" into this 35' front yard setback.
- The subject site is zoned R-16 (A) which requires a 35' front yard setback.
- The subject site is located at the southeast corner of Hillcrest Road and N. Janmar Drive. Regardless of how the structure is proposed to be oriented to front Hillcrest Road, the subject site has a required 35' front yard setbacks along both street frontages.
- The submitted site plan indicates that the proposed home structure is located as close as 32' 9" from one of the site's two required front yards (N. Janmar Drive) or 2' 3" into this 35' front yard setback.
- DCAD records indicate the following improvements for property located at 11534 Hillcrest Road: "main improvement: a structure with 2,986 square feet of living area built in 1957", and "additional improvements; a 616 square foot attached garage, and a pool".
- The subject site is slightly sloped, slightly irregular in shape and according to the submitted application is 0.816 acres (or approximately 38,150 square feet) in area. The site is zoned R-16 (A) where lots are typically 16,000 square feet in area.
- 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-16(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-16(A) zoning classification.
- If the Board were to grant this request and impose the submitted revised site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which is single family structure located 32' 9" from one of the site's two required front yards (N. Janmar Drive) or 2' 3" into this 35' front yard setback.

**GENERAL FACTS/STAFF ANALYSIS (fence standards):**

- The requests for special exceptions to the fence standards regulations on a site developed with a single-family home focus on maintaining a fence higher than 4' in the site's two front yard setbacks:
  1. Along N. Janmar Drive: – an 8' solid wood fence, a 5' 6" to 6' decorative wrought iron fence with 6' high stone masonry columns, a portion of which sits atop a 0' to 3' retaining wall and a 7' 6" motorized wrought iron gate);
  2. Along Hillcrest Road: – a 5' 6" to 6' decorative wrought iron fence with 6' high stone masonry columns and a 7' 6" motorized wrought iron gate of which sits atop a 2' to 3' retaining wall; and,
- The subject site is zoned R-16 (A) which requires a 35' front yard setback and a 10' side yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is located at the southeast corner of Hillcrest Road and N. Janmar Drive. Regardless of how the structure is proposed to be oriented to front Hillcrest Road, the subject site has a required 35' front yard setbacks along both street frontages.
- The applicant submitted revised site plan and elevation representing the proposed fences in the front yard setbacks and in the side yard setbacks with notations indicating that the proposal reaches a maximum height of 9' 6".
- The following additional information was gleaned from the submitted revised site plan:
  - The proposal is represented as being approximately 150' in length parallel to Janmar Drive and about 35' perpendicular to the street on the east side of the site, and between 5' - 20' on the west side in this required front yard as the fence approaches the intersection with Hillcrest Road.
  - The proposal is represented as being approximately 180' in length parallel to Hillcrest Road and about 35' perpendicular to the street on the east side of the site, and between 5'- 20' on the west side in this required front yard as the fence approaches the intersection with Janmar Drive.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area and noted several other fences that appeared to be above 4' in height along Hill Crest Road and located in front yard setback. None of these existing fences have recorded BDA history.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to fence height of 5' 6" will not adversely affect neighboring property.
- As of May 10<sup>th</sup>, 2 letters have been submitted in support and 3 letters in opposition to this request.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted revised site plan and elevation would require the proposal exceeding 5' 6" in height located in the front yard setbacks and exceeding 9' 6" in height in the side yard setbacks to be maintained in the locations and of the heights and materials as shown on these documents.

## **GENERAL FACTS/STAFF ANALYSIS (20' visibility triangle special exceptions):**

- The requests for special exceptions to the visual obstruction regulations on a site developed with a single-family home focus on:
  - 1) maintaining portions of a 6' high stone masonry column and portion a retaining wall in one of the two 20' visibility triangles located on the north side of the driveway into the site from Hillcrest Road; and
  - 2) maintaining portion of a retaining wall in one of the two 20' visibility triangles located on the south side of the driveway into the site from Hillcrest Road.
- The Dallas Development Code states the following: 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 at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant submitted a revised site plan and elevation indicating portions of a 6' high stone masonry column and portion a 3' high retaining wall in one of the two 20' visibility triangles located on the north side of the driveway into the site from Hillcrest Road, and portions of a 3' retaining wall and landscape materials in one of the two 20' visibility triangles located on the south side of the driveway into the site from Hillcrest Road.
- The Sustainable Development Department Senior Engineer has submitted a revised review comment sheet marked "Has no objections to a special exception to the visibility triangles at private residential driveway".
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations, to maintain portions of a 6' high stone masonry column and portion a 3' high retaining wall in one of the two 20' visibility triangles located on the north side of the driveway into the site from Hillcrest Road, and portions of a 3' retaining wall and landscape materials in one of the two 20' visibility triangles located on the south side of the driveway into the site from Hillcrest Road do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted revised site plan and elevation would limit the items to the required two 20-foot visibility triangle on both sides of the driveway into the site from Hillcrest Road to that what is shown on these documents – portions of 6' high columns, 3' retaining walls and landscape materials.

### **Timeline:**

January 31, 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.

- March 11, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 13, 2019: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the March 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standards that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 20, 2019: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator (see Attachment A).
- March 20, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- April 2, 2019: 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 Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- April 3, 2019: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "recommends denial of the proposed special exception to the visibility triangle at the intersection of Hillcrest Road and N. Janmar Drive and has no objections to a special exception to the visibility triangles at the private driveways" (See Attachment C).
- April 15, 2019: Staff informed the Board of Adjustment at the April 15<sup>th</sup> briefing that the application had not been insufficiently posted hence could not be called or heard at the April 15<sup>th</sup> hearing, and would require the application to be readvertised and renoticed for the May 20<sup>th</sup> public hearing. The Board Senior Planner informed the applicant the May 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their

analysis, and the May 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

- May 7, 2019: 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 Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- May 7, 2019: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment D).
- May 8, 2019: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator (see Attachment E).
- May 9, 2019: The Sustainable Development Department Senior Engineer submitted a revised review comment sheet marked "Has no objections".

**BOARD OF ADJUSTMENT ACTION: May 20, 2019**

APPEARING IN FAVOR: Michael R. Coker, 3111 Canton Street, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1 of 3: Richardson**

I move that the Board of Adjustment, in Appeal No. BDA 189-038, on application of James White III, represented by Michael R. Coker Company, **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.

**SECOND: Brooks**

**AYES:** 2 – Richardson, Brooks

**NAYS:** 3 - Shouse, Pollock, Bartos

**MOTION FAILED:** 2 – 3

**MOTION: Shouse**

I move that the Board of Adjustment, in Appeal No. BDA 189-038, on application of James White III, represented by Michael R. Coker Company, **grant** the two-foot three-inch variance to the front yard setback regulations requested by this applicant 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 result in unnecessary hardship to this applicant.

**SECOND: Pollock**

**AYES:** 1 – Shouse

**NAYS:** 4 - Richardson, Pollock, Bartos, Brooks

**MOTION FAILED:** 1 – 4

**MOTION: Bartos**

I move to reconsider that the Board of Adjustment, in Appeal No. BDA 189-038, on application of James White III, represented by Michael R. Coker Company, **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.

**SECOND: Shouse**

**AYES:** 5 – Richardson, Shouse, Pollock, Bartos, Brooks

**NAYS:** 0

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

**MOTION #2 of 3: Brooks**

I moved that the Board of Adjustment, in Appeal No. BDA 189-038, on applicant of James White III, represented by Michael R. Coker Company, grant the request of this applicant to maintain a nine-foot six-inch high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

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

**SECOND: Shouse**

**AYES:** 5 – Richardson, Shouse, Pollock, Bartos, Brooks

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

MOTION #3 of 3: Brooks

I move that the Board of Adjustments, in Appeal No. BDA 189-038, on application of James White III, represented by Michael R. Coker Company, grant the request to maintain items in the visibility triangles at driveway approaches as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because or evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

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

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

SECOND: Shouse

AYES: 5 – Richardson, Shouse, Pollock, Bartos, Brooks

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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The meeting was adjourned at 2:37 p.m. on May 20, 2019.

\_\_\_\_\_  
CHAIRPERSON

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

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BOARD SECRETARY

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