

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL COUNCIL CHAMBERS  
WEDNESDAY, May 20, 2020**

MEMBERS PRESENT AT BRIEFING: Michael Schwartz, Chair, Matthew Vermillion, regular member, Damian Williams, regular member, Catrina Johnson, regular member and Jared Slade, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Michael Schwartz, Chair, Matthew Vermillion, regular member, Damian Williams, regular member, Catrina Johnson, regular member and Jared Slade, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

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

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**11:06 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 20, 2020 docket.**

**BOARD OF ADJUSTMENT ACTION: May 20, 2020**

**1:03 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 B, February 19, 2020 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: May 20, 2020**

**MOTION: Vermillion**

Approval of the Board of Adjustment Panel B, February 19, 2020 public hearing minutes.

**SECONDED: Johnson**

**AYES:** 5 – Schwartz, Slade, Williams, Vermillion, Johnson

**NAYS:** 0

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

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**FILE NUMBER:** BDA190-030(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Danny Sipes for a special exception to the single family use regulations at 8719 Diceman Drive. This property is more fully described as Lot 26, Block 5/5289, and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one. The applicant proposes to construct and/or maintain an additional dwelling non-rental unit, which will require a special exception to the single family use regulations.

**LOCATION:** 8719 Diceman Drive

**APPLICANT:** Danny Sipes

**REQUEST:**

A request for a special exception to the single family use regulations is made to construct and maintain a two-story additional home/dwelling unit structure on a site developed with a two-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 the use of the additional dwelling unit as rental accommodations.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when, in the opinion of the board, the structure or portion of the structure will be used by bonafide servants or caretakers and will not be rental accommodations.

## **BACKGROUND INFORMATION:**

### **Zoning:**

**Site:** R-7.5(A) (Single Family District)  
**East:** R-7.5(A) (Single Family District)  
**North:** 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 is developed with a single family home. The areas to the north, west, south, and east 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:**

This request for a special exception to the single family use regulations focuses on constructing and maintaining a two-story additional home/dwelling unit structure on a site developed with a two-story main single-family home/dwelling unit structure.

The site is zoned an R-7.5(A) Single Family District where the Dallas Development Code permits one dwelling unit per lot.

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

The Dallas Development Code defines:

- a “single family” use as “one dwelling unit located on a lot;” and 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.”

- a “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.”
- a “bathroom” as “any room used for personal hygiene and containing a shower or bathtub or containing a toilet and sink.”
- a “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, sunrooms, and other similar rooms are considered bedrooms.”

The submitted site plan denotes the locations of two building footprints, the larger of the two with what appears to be the existing two-story single family main structure and the smaller of the two denoted as “new two-story masonry/wood garage studio”.

This request centers on the function of what is proposed to be inside the smaller structure on the site – the “new two-story masonry/wood garage studio” structure, specifically its collection of rooms/features shown on the floor plan.

According to DCAD records, the “main improvement” for the property addressed at 8719 Diceman Drive is a structure built in 1941 with 1,085 square feet of living area with an “additional improvement,” a 234-square-foot attached garage.

According to the submitted site plan the main structure contains 2,591 square feet of total floor area and the proposed additional dwelling unit contains 641 square feet of total floor area (with garage 1282 square feet).

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.

On February 24, 2020, the applicant submitted a statement (Attachment A) noting how the proposed additional dwelling unit would be used as guest quarters and not used for rental accommodations. No further details were provided.

If the board were to grant this request, Building Inspection would view the structure denoted on the submitted site plan as “new two-story masonry/wood garage studio” as an additional “dwelling unit”.

**Timeline:**

January 10, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

February 11, 2020: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

February 14, 2020: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 25, 2020: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

February 27, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant

Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: May 20, 2020**

**APPEARING IN FAVOR:** None.

**APPEARING IN OPPOSITION:** None.

**MOTION: Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 190-030, on application of Danny Sipes, **grant** the request to construct and maintain an additional dwelling unit as a special exception to the single-family zoning use regulations, 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, and are consistent with the general purpose and intent of the Code, 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.

**SECONDED: Williams**

**AYES:** 5 - Schwartz, Slade, Vermillion, Williams, Johnson

**NAYS:** 0

**MOTION PASSED:** 5 – 0

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**FILE NUMBER:** BDA190-033(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Dean Kraus for a special exception to the sign regulations at 1301 Chalk Hill Road. This property is more fully described as Lot 4, Block 7192 and is zoned an IM Industrial Manufacturing District , which limits the number of detached signs on a premise to one per street frontage other than expressways and allows only one detached sign for every 450 feet of frontage or fraction thereof on an expressway. The applicant proposes to construct and maintain one additional detached premise sign, on nonresidential premises, which will require a special exception to the sign regulations.

**LOCATION:** 1301 Chalk Hill Road

**APPLICANT:** Dean Kraus

**REQUEST:**

A request for a special exception to the sign regulations is made to construct and maintain an additional detached premise sign on a site that is being developed with warehouse uses.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:**

Section 51A-7.703(d)(2) of the Dallas Development Code states that the Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

**STAFF RECOMMENDATION (additional detached sign):**

Approval

Rationale:

- Staff concluded from the information submitted by the applicant that the applicant has substantiated that strict compliance with the requirement of the sign regulations will result in inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

**BACKGROUND INFORMATION:**

**Zoning:**

**Site:** IM (Industrial Manufacturing District)

**North:** IM (Industrial Manufacturing District)

**East:** IR (Industrial Research District)

**South:** PD No. 631 ((Planned Development District)

**West:** R-7.5(A) (Single family district)

**Land Use:**

The site is being developed with a warehouse. The area to the north, south, and east are developed with industrial uses and vacant property; the area to the west is contains undeveloped land and 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 (additional detached sign):**

The property consists of over 90 acres of land being developed with a warehouse use. The request for a special exception to the sign regulations focuses on locating and maintaining an additional sign at one of the driveway frontages along Chalk Hill Road.

Section 51A-7.304(b) (4) of the Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways. The size of the property is not taken into account.

The submitted site plan indicates the location of two detached monument signs, (represented as “monument sign location”) on the site’s Chalk Hill Road frontage, hence this request is for a special exception to the sign regulations for an additional detached monument sign.

A sign elevation denoting the two detached monument signs as “proposed monument sign” has been submitted.

The applicant submitted a document (see attachment A) that substantiates that strict compliance with the requirement of the sign regulations will result in inequity to the applicant without sufficient corresponding benefit to the city and its citizens due to Amazon property being so large and having very heavy trucking traffic. Having one additional monument sign will allow Amazon to safely direct the visitor and public traffic to the correct entrance, while also helping limit traffic in the already very busy shipping and trucking entrance.

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

- That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign along the street frontage) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

If the board were to approve the request for a special exception to the sign regulations, the board may consider imposing a condition that the applicant complies with the submitted site plan and sign elevation.

**Timeline:**

January 15, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

February 11, 2020: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

February 14, 2020: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

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

Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

March 4, 2020: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: May 20, 2020**

**APPEARING IN FAVOR:** None.

**APPEARING IN OPPOSITION:** None.

**MOTION: Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 190-033, on application of Dean Kraus, **grant** the request for a special exception to the sign regulations, 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, and are consistent with the general purpose and intent of the Code, subject to the following condition:

Compliance with the submitted site plan and sign elevation is required

**SECONDED: Williams**

**AYES:** 5 - Schwartz, Slade, Vermillion, Williams, Johnson

**NAYS:** 0

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

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**FILE NUMBER:** BDA190-038(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Rob Baldwin of Baldwin and Associates for a special exception to the landscape regulations at 2601 Hudnall Street. This property is more fully described as Lot 1 Block A/5706, and is zoned PD 193 S-128, which requires mandatory landscaping. The applicant proposes to construct and/ maintain a multifamily residential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 2601 Hudnall Street

**APPLICANT:** Rob Baldwin of Baldwin and Associates

**REQUESTS:**

A request for a special exception to the landscape regulations is made to construct and maintain a multifamily development with a parking structure on a site that is currently

undeveloped, and not to fully provide the required landscaping. More specifically, the request includes (1) to relocate required sidewalks outside of the required zone of five to 12 feet from back of curb, and (2) to locate street trees outside of the two-and-a-half to five-feet from the back of curb zone on Hudhall Street.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:**

Section 51P-193-126(a) (4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property complies with a landscape plan as a condition to granting the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the special exception on the basis that it does not appear the request will compromise the spirit and intent of this ordinance.

**BACKGROUND INFORMATION**

- Site:** PD 193 PDS 128 (Planned Development)
- North:** PD 193 (GR) (Planned Development, General Retail)
- South:** PD 193 (MF-2) (Planned Development, Multifamily)
- East:** PD 193 (R-7.5 H-6) (Planned Development, Single Family)
- West:** PD 193 (GR) (Planned Development, General Retail)

**Land Use:**

The site is being developed with a multifamily development. The areas to the north, east, and south and west are developed with retail, single family, and multifamily 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:**

This request for a special exception to the landscape regulations focuses on constructing and maintaining a multifamily development with a parking structure on a site that is undeveloped and not to fully provide the required landscaping. The applicant proposes (1) to relocate required sidewalks outside of the required zone of five to 12 feet from back of curb, and (2) to locate street trees outside of the two-and-a-half to five-feet from the back of curb zone on Hudnall Street.

PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

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

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

The applicant is seeking a special exception to the landscaping requirements of PD 193 Part 1, as established under PDS 128 for the property. Under PDS 128, development follows regulations established for uses in GR subdistricts requiring 10 percent total landscape site area and 60 percent of the required front yard. Trees, sidewalks, and screening must comply with Section 51P-193.126.

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

The council approved development plan for PDS 128 establishes no designation of landscaping and the placement of trees. Therefore, there is no restriction on the review of landscaping by the board.

The alternate landscape plan provides for required street trees, landscape site areas, and sidewalk widths. The plan proposes to preserve five large mature trees along Hudnall Street and set back behind the sidewalk. No screening of off-street parking is required

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

The alternate landscape plan places sidewalks outside of the required zone of five to 12 feet from back of curb and relocates some street trees outside of the two-and-a-half to five feet from back of curb zone on Hudnall Street.

The five retained trees are set outside of the tree planting zone and the sidewalk is placed along the curb to help protect the root systems of the trees.

The chief arborist recommends approval of the alternate landscape plan because the special exception would not compromise the spirit and intent of PD 193 Part 1 landscape regulations.

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

The special exception (the required sidewalks outside of the required zone of five to 12 feet from back of curb and relocate some street trees outside of the two-and-a-half to five feet from back of curb zone of the PD 193 landscape requirements) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards”.

If the board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted an exception from full compliance to the requirements of the PD 193 landscape ordinance.

**Timeline:**

January 27, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

February 11, 2020: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

February 14, 2020: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 27, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, 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.

March 2, 2019: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: May 20, 2020**

APPEARING IN FAVOR: None

APPEARING IN OPPOSITION: None

**MOTION: Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 190-038, on application of Rob Baldwin of Baldwin Associates, **grant** the request for a special exception to the landscape requirements contained in PD 193, 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, and are consistent with the general purpose and intent of the Code, subject to the following condition:

Compliance with the submitted alternate landscape plan is required

**SECONDED: Williams**

**AYES:** 5 - Schwartz, Slade, Vermillion, Williams, Johnson

**NAYS:** 0

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

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**FILE NUMBER:** BDA190-058(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Efren Blackledge for a variance to the front yard setback regulations at 7318 La Vista Drive. This property is more fully described as Lot 28, Block B/2730, and is zoned an R-7.5(A) Single Family District, which requires a front yard setback of 25 feet. The applicant proposes to construct

and/or maintain a single-family residential structure and provide a five-foot front yard setback, which will require a 20-foot variance to the front yard setback regulations.

**LOCATION:** 7318 La Vista Drive

**APPLICANT:** Efren Blackledge

**REQUEST:**

A request for a variance to the front yard setback regulations of 20 feet is made to construct and maintain a two-story single family structure with a total “area” of 5,394 square feet or with a total “A/C” of 4,277 square feet, part of which is to be located five feet from one of the site’s two front property lines (Lucerne Street) or 20 feet into this 25-foot front yard setback on a site that is currently developed with a one-story single family home.

**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.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-7.5(A) District in that it is restrictive in area due to having two, 25-foot front yard setbacks when most lots in this zoning district have one 25-foot front yard setback.

The subject site is 50 feet wide and has 20 feet of developable width available once a 25-foot front yard setback is accounted for on the southeast and a five-foot side yard setback is accounted for on the northwest. If the lot were more typical to others in the zoning district with only one front yard setback, the 50-foot wide site would have 40 feet of developable width.

- Staff concluded that the applicant has shown by submitting a document indicating among other things that that the AC home size of the proposed home on the subject site at 4,277 square feet is commensurate to 15 other homes in the same R-7.5(A) zoning district that have average home size of approximately 4,476 square feet.

### **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 is undeveloped. The areas to the north, south, west, and east are developed with single family uses.

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

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

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

This request for a variance to the front yard setback requirement of 20 feet focuses on constructing and maintaining a two-story single-family structure. The home contains a total “slab area” of approximately 3,375 square feet. The combined floor area for both floors is 5,394 square feet of which 4,277 square feet is living area (with A/C). A part of this structure is proposed to be located five feet from one of the site’s two front property lines (on Lucerne Street) or 20 feet into this 25-foot front yard setback on a site that is

currently developed with a one-story single family home. The property is located in an R-7.5(A) Single Family District.

The subject site is located at the southwest corner of La Vista Drive and Lucerne Street. Regardless of how the structure is proposed to be oriented to front La Vista Drive, the subject site has a 25-foot front yard setback along both street frontages. The site has a 25-foot front yard setback along La Vista Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25-foot front yard setback along Lucerne Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a five-foot side yard setback is required. However, the site's Lucerne Street's frontage that would function as a side yard on the property is treated as a front yard setback nonetheless, to maintain the continuity of the established front yard setback established by the lots to the southwest that front/are oriented southeast towards Lucerne Street.

The submitted site plan indicates the proposed structure is located five feet from the Lucerne Street front property line or 20 feet into this 25-foot front yard setback.

According to DCAD records, the "main improvement" for property addressed at 7318 LaVista Drive is a structure built in 1975 with 1,050 square feet of total/living area with the following "additional improvements": a 360 square-foot detached garage.

The subject site is flat, rectangular (approximately 150 feet x 50 feet), and according to the submitted application is 0.17 acres (or 7,500 square feet) in area. Most lots in the R-7.5(A) zoning district have one 25-foot front yard setback, two five-foot side yard setbacks, and one 15-foot rear yard setback; this site has two 25-foot front yard setbacks and two five-foot side yard setbacks. The site plan represents that approximately 2/3 of the structure is located in the 25-foot the Lucerne Drive front yard setback. The 50-foot wide subject site has 20 feet of developable width available once a 25-foot front yard setback is accounted for on the southeast, a five-foot side yard setback is accounted for on the northwest. If the lot were more typical to others in the zoning district with only one front yard setback, the five feet wide site would have 40 feet of developable width. No variance would be necessary if the Lucerne Drive's frontage were a side yard since the site plan represents that the proposed home is five feet from the Lucerne Drive property line and the side yard setback for properties zoned R-7.5A) is five feet.

The applicant has submitted a document indicating among other things that the A/C home size of the proposed home on the subject site is approximately 4,277 square feet, and the average of 15 other properties in the same zoning is approximately 4,476 square feet.

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 an R-16(A) Single Family District 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 the variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located five feet from the site’s Lucerne Drive front property line (or 20 feet into this 25-foot front yard setback).

**Timeline:**

March 17, 2020: 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 6, 2020: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

April 16, 2020: 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 28th deadline to submit additional evidence for staff to factor into their analysis; and the May 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

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

April 30, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Senior Engineer, the Board of Adjustment Senior Planner the Building Inspection Senior Plans Examiner/Development Code Specialist, 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, 2020**

APPEARING IN FAVOR: None

APPEARING IN OPPOSITION: None

**MOTION: Slade**

I move that the Board of Adjustment, in Appeal No. BDA 190-058, on application of Efren Blackledge, **grant** the 20-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required

**SECONDED: Williams**

AYES: 5 - Schwartz, Slade, Vermillion, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA190-035(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Michael Coker for a variance to the front yard setback regulations, a special exception to the fence height regulations, a special exception to the fence standards regulations, and a special exception to the visual obstruction regulations at 4748 Elsby Avenue. This property is more fully described as Lot 3, Block C/5681, and is zoned an R-7.5(A) Single Family District, which limits the height of a fence in the front yard to four feet, requires a fence panel with a surface area that is less than 50 percent open, may not be located less than five feet lot line, requires a 20-foot visibility triangle at the driveway approaches, and requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a single family residential structure and provide a four-foot front yard setback, which will require a 21-foot variance to the front yard setback regulations and construct and/or maintain an eight-foot-high fence in a required front yard, which will require a four-foot special exception to the fence 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 five feet from the front lot line, which will require a special exception to the fence regulations and to construct and/or maintain items in a required visibility triangles, which will require a special exception to the visual obstruction regulation.

**LOCATION:** 4748 Elsby Avenue

**APPLICANT:** Michael Coker

**REQUESTS:**

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

1. A variance to the front yard setback regulations of 21 feet is made to construct/maintain a single family residential structure with an unknown square feet total "home size" (the applicant did not provide the floor area), part of which is to be located four feet from one of the site's two front property lines (Elsby Avenue) or 21 feet into this 25-foot front yard setback;
2. A special exception to the fence standards related to the height of four feet is made to construct/maintain an eight tall solid wood fence with an eight-high cedar wood rolling gate located in one of the site's two front property lines (Elsby Avenue);
3. A special exception to the fence standards related to fence panel materials/location from the front lot line is made to maintain the aforementioned, eight tall solid wood fence, with panels with surface areas that are less than 50 percent open located less than 5' from Elsby Avenue front lot line; and

4. Special exceptions to the visual obstruction regulations are made to construct and maintain portions of the aforementioned eight tall solid wood fence with an eight-high cedar wood rolling gate in the two 20' visibility triangles on both sides of the driveway into the site on Elsby Avenue.

**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.

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

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards regulations 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 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 within the same R-7.5(A) District.

**STAFF RECOMMENDATION (fence standards):**

No staff recommendations are made on these or any requests for a special exception to the fence standards since the basis for this type of appeals is when in the opinion of the board, the special exceptions will not adversely affect neighboring property.

**STAFF RECOMMENDATION (visual obstruction special exceptions 20' visibility triangles at the driveway):**

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 request.
- 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.

**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 is undeveloped. The areas to the north, east, west, and south are developed with single-family uses.

**Zoning/BDA History:**

There have been no related board or zoning cases near the subject site within the last five years.

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

The subject site is zoned an R-7.5(A) Single Family District which requires a minimum front yard setback of 25 feet. The property is located at the southwest corner of Elsby Avenue and Linwood Avenue. Regardless of how the structure is proposed to be oriented to front Linwood Avenue, the lot has a 25-foot front yard setback along both street frontages in order to maintain the continuity of the established front yard setback established by the lots to the southwest that front and are oriented towards Elsby Avenue and the continuity of the established front yard setback established by the lots to the south that front and are oriented towards Linwood Avenue.

The request for a variance to the front yard setback regulations of 21 feet focuses on constructing and maintaining a single family residential structure with an unknown total floor area (the applicant did not provide the floor area), part of which is to be located four feet from one of the site's two front property lines (Elsby Avenue) or 21 feet into this 25-foot front yard setback.

The submitted site plan indicates the proposed structure is located four feet from the Elsby Avenue's front property line or 21 feet into this 25-foot front yard setback.

According to DCAD records, there are "no main improvement" and "no additional improvements" for property addressed at 4748 Elsby Avenue.

The subject site is flat, irregular in shape, and according to the application, it is 0.279 acres (or approximately 12,150 square feet) in area. In an R-7.5(A) District, the minimum lot size is 7,500 square feet.

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

- That granting the variance 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-7.5(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-7.5(A) zoning classification.

If the board were to grant the variance request and impose the submitted site plan as a condition, the single-family structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located four feet from the Elsby Avenue’s front property line or 21 feet into this 25-foot front yard setback.

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

The requests for special exceptions to the fence standards regulations related to height and fence panel materials/location from a front lot line focus on:

- constructing and maintaining an eight-foot tall solid wood fence with an eight-foot high cedar wood rolling gate, a portion of which sits atop a two-and-a-half-foot tall retaining wall, in one of the site’s two front yards (Elsby Avenue).
- constructing and maintaining an eight-foot tall solid wood fence, a portion of which sits atop a two-and-a-half-foot tall retaining wall, with panels with surface areas that are less than 50 percent open located less than five feet from the Elsby Avenue front lot line.

Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. As noted, the proposed fence would be within the required 25-foot front yard setback.

The Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five from the front lot line.

The submitted site plan and elevation denote an eight-foot tall solid wood fence with a rolling solid wood gate a portion of which sits atop a one-foot tall retaining wall (the fence remains eight feet tall including the retaining wall) located less than five feet from Elsby Avenue front lot line.

The following additional information was gleaned from the submitted revised site plan:

- The proposal is represented as being approximately 40 feet in length parallel to Eslby Avenue and approximately 25 feet perpendicular to the street on the west and five feet on the east side of the site on the Eslby Avenue required front yard; located approximately at the front property line or approximately 12 feet from the pavement line.

The Board of Adjustment Senior Planner conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above four feet in height in a required front yard.

As of May 14, 2020, six letters were submitted in opposition to the request and no letters have been submitted in support to the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of four feet and to location and materials on Eslby Avenue will not adversely affect neighboring property.

Granting these special exceptions to the fence standards related to height of up to four feet and panel with a surface area that is less than 50 percent open to locate in certain areas on the site with a condition imposed that the applicant complies with the submitted site plan and elevation, would require the proposal exceeding four feet in height in the front yard setbacks and in some areas solid fence panels on Eslby Avenue's front lot line to be maintained in the locations and of the heights and materials as shown on these documents.

**GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exception driveways):**

These requests for special exceptions to the visual obstruction regulations focus on constructing and maintaining portions of an eight-foot tall solid wood fence with an eight-foot high cedar wood rolling gate in the two 20-foot visibility triangles on both sides of the driveway into the site on Eslby Avenue.

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 is requesting special exceptions to the visual obstruction regulations for the two required 20-foot visibility triangles on each side of the driveway into the site on Eslby Avenue.

The applicant submitted a site plan and a site plan/elevation indicating portions of an eight-foot tall solid wood fence with an eight-foot high cedar wood rolling gate located in the two 20-foot visibility triangles on both sides of the driveway into the site on Eslby Avenue.

The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.

As of May 14, 2020, six letters were submitted in opposition to the request and no letters have been submitted in support to the request

The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations, to locate and maintain portions of an eight-foot tall solid wood fence with an eight-foot high cedar wood rolling gate in the two 20-foot visibility triangles on both sides of the driveway into the site on Eslby Avenue does not constitute a traffic hazard.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in the two 20-foot visibility triangles on each side of the driveway into the site on Eslby Avenue to that what is shown on these documents – an eight-foot tall solid wood fence with an eight-foot high cedar wood rolling gate.

**TIMELINE:**

January 23, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

February 11, 2020: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

February 14, 2020: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the

February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;

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

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

February 28, 2020: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”

**BOARD OF ADJUSTMENT ACTION: May 20, 2020**

**APPEARING IN FAVOR:** Michael Coker 3111 Canton St. Dallas, TX.

**APPEARING IN OPPOSITION:** Tom Dudney 4751 Elsby Ave. Dallas, TX.

**MOTION#1: Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 190-035, on application of Michael Coker, **grant** the 21-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

**SECONDED: Slade**

**AYES:** 5 - Schwartz, Housel, Vermillion, Williams, Johnson

**NAYS:** 0

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

**MOTION#2: Slade**

I move that the Board of Adjustment, in Appeal No. BDA 190-035, on application of Michael Coker, **grant** the request of this applicant to construct and/or maintain an eight-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

**SECONDED: Vermillion**

**AYES:** 5 - Schwartz, Slade, Vermillion, Williams, Johnson

**NAYS:** 0

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

**MOTION#3: Slade**

I move that the Board of Adjustment, in Appeal No. BDA 190-035, on application of Michael Coker, **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 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.

**SECONDED: Williams**

**AYES:** 5 - Schwartz, Slade, Vermillion, Williams, Johnson

**NAYS:** 0

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

**MOTION#4: Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 190-035, on application of Michael Coker **grant** the request to maintain items in the visibility triangle at the driveway approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

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

Compliance with the submitted site plan and elevation is required.

**SECONDED: Slade**

**AYES:** 5 - Schwartz, Slade, Vermillion, Williams, Johnson

**NAYS:** 0

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

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**FILE NUMBER:** BDA190-017(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Santos Martinez of La Sierra Planning Group, for a special exception to the parking regulations at 3510 Ross Avenue. This property is more fully described as a tract of land within Block 513 and is zoned Subarea 1 within Planned Development District No. 298, which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for a personal service use, general merchandise less than 3500, and general merchandise greater than 3500 and provide 31 of the required 41 parking spaces, which will require a 10-space special exception (25% reduction) to the parking regulation.

**LOCATION:** 3510 Ross Avenue

**APPLICANT:** Santos T. Martinez of La Sierra Planning Group

**REQUEST:**

A request for a special exception to the off-street parking regulations of eight spaces is made to convert an existing florist use with 8,250 square feet of floor area to a personal service use, a general merchandise or food store use 3,500 square feet or less use, and/or a general merchandise or food store greater than 3,500 square feet use and will provide 31 parking spaces (or 75 percent) of the 41 required parking spaces for the subject site.

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

- 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.

**ORIGINAL STAFF RECOMMENDATION (February 19, 2020):**

Denial.

The Sustainable Development and Construction Senior Engineer made the following statement:

The Institute of Transportation Engineers' Parking Generation manual (5th Edition) provides data for similar uses. It estimates a peak parking demand on a typical day anywhere between 39 and 70 parked vehicles. The applicant did not provide a parking analysis or data to justify the request.

**REVISED STAFF RECOMMENDATION (March 18, 2020):**

Approval limited to a general merchandise or food store 3,500 square feet or less or a general merchandise or food store greater than 3,5000 square feet use.

The Sustainable Development and Construction Senior Engineer made the following statement:

Upon review of report dated February 25, 2020, Engineering staff recommends the special parking exception should automatically and immediately terminate if and when a general merchandise or food store 3,500 square feet or less or a general merchandise or food store greater than 3,5000 square feet use is changed or discontinued. The same parking study does not support a special exception based on anticipated parking demand for fitness studio (personal service use).

**BACKGROUND INFORMATION:**

**Zoning:**

**Site:** Planned Development No. 298 (Subarea 1)  
**Northeast:** Planned Development No. 298 (Subarea 1B)  
**Southeast:** Planned Development No. 298 (Subarea 7)  
**Southwest:** Planned Development No. 298 (Subarea 1)  
**Northwest:** Planned Development No. 298 (Subarea 1A) with Specific Use Permit No. 1819

**Land Use:**

The subject site is developed with vacant building which was previously occupied by a florist. Surrounding uses include a vacant vehicle or engine repair or maintenance shop to the northeast, a church and a construction site for a future multifamily use is to the southeast, parking lots to the southwest, and a multifamily use across Ross Avenue.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

The purpose of this request for a special exception to the off-street parking regulations of eight spaces is made to convert an existing 8,250-square-foot building, previously occupied by a florist, to a personal service use<sup>1</sup>, which the applicant intends to operate as a gym or fitness center, a general merchandise or food store use 3,500 square feet or less use, a general merchandise or food store greater than 3,500 square feet use, or

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<sup>1</sup> Personal service use means, "A facility for the sale of personal services. Typical personal service uses include a barber/beauty shop, shoe repair, a tailor, an instructional arts studio, a photography studio, a laundry or cleaning pickup and receiving station, a handcrafted art work studio, safe deposit boxes, a travel bureau, and a custom printing or duplicating shop." Reference Section 51A-4.210(23) of the Dallas Development Code.

a combination of these uses. The applicant proposes to provide 31 of the 41 required parking spaces parking spaces on the subject site.

The Dallas Development Code requires, one space for each 200 square feet of floor area for a personal service use, a general merchandise or food store use 3,500 square feet or less use, and a general merchandise or food store greater than 3,500 square feet use. The Dallas Development Code also allows for a one-space parking reduction for each six bicycle parking spaces provided<sup>2</sup>. Therefore, the proposed uses require 41 parking spaces if no bicycle parking reductions are applied or 39 parking spaces if a minimum of 12 bicycle parking spaces are provided.

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

- The parking demand generated by the personal service use on the site does not warrant the number of off-street parking spaces required, and
- The special exception of eight spaces 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 ten spaces shall automatically and immediately terminate if and when the personal service use, general merchandise or food store use 3,500 square feet or less use, general merchandise or food store greater than 3,500 square feet use, or a combination of these uses are changed or discontinued, the applicant would be allowed to lease and maintain the structure on the site with these specific uses with the specified square footage, and provide 31 of the 41 code required off-street parking spaces.

**Timeline:**

November 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.

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

January 14, 2020: The Interim Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the January 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:

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<sup>2</sup> Reference Section 51A-4.314 of the Dallas Development Code.

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

January 23, 2020: The applicant’s representative added “or retail use” to the original request to reduce parking requirements.

January 30, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included the Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director..

January 30, 2020: The City of Dallas Sustainable Development and Construction Senior Engineer submitted a memo regarding this application (see Attachment A).

February 19, 2020: The Board of Adjustment Panel B conducted a public hearing on this application, and delayed action on this application until the next public hearing to be held under advisement until March 18, 2020 and instructed staff to re-advertise the case to include retail use.

February 21, 2020: The applicant’s representative was emailed a letter of the board’s action, the February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis, and the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the board’s docket materials.

February 25, 2020: The applicant submitted a letter and parking study beyond what was submitted with the original application (see Attachment B).

February 28, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included the Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Building Official, Assistant Building Official, and Chief Planner; and Engineering Division staff including the Senior Engineer.

March 3, 2020: The City of Dallas Sustainable Development and Construction Senior Engineer submitted a memo regarding this application (see Attachment C).

**BOARD OF ADJUSTMENT ACTION: May 20, 2020**

**APPEARING IN FAVOR:** Santos Martinez P.O. Box 1275 Angel Fire, NM

**APPEARING IN OPPOSITION:** None

**MOTION: Williams**

I move that the Board of Adjustment, in Appeal No. BDA 190-017, on application of Santos Martinez of La Sierra Planning Group, **grant** the request of this applicant to provide 31 off-street parking spaces as a special exception to the off-street parking regulations contained in the Dallas Development Code, as amended, which require 41 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for a personal service, a general merchandise food store 3,500 square feet or less, and a general merchandise or food store greater than 3,500 square feet uses only.

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

The special exception of 10 spaces shall automatically and immediately terminate if and when a personal service, a general merchandise food store 3,500 square feet or less, or a general merchandise or food store greater than 3,500 square feet uses are changed or discontinued.

**SECONDED: Vermillion**

**AYES:** 5 - Schwartz, Slade, Vermillion, Williams, Johnson

**NAYS:** 0

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

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The meeting was adjourned **at 2:17 P.M. on May 20, 2020.**

\_\_\_\_\_  
CHAIRPERSON

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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.