

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
MONDAY, June 22, 2020**

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

MEMBERS ABSENT FROM BRIEFING: None.

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

MEMBERS ABSENT FROM HEARING: None.

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

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

10:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 22, 2020 docket.**

BOARD OF ADJUSTMENT ACTION: June 22, 2020

1:06 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, May 18, 2020 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: June 22, 2020

MOTION: Pollock

Approval of the Board of Adjustment Panel C, May 18, 2020 public hearing minutes.

SECONDED: Hounsel

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-029(JM)

BUILDING OFFICIAL'S REPORT: Application of Carlos Montoya for a special exception to the side yard setback regulations, and for a special exception to the front yard setback regulations at 10913 Calmar Street. This property is more fully described as Lot 4, C/8777, and is zoned an A(A) Agricultural District, which requires a front yard setback of 50 feet and requires a side yard setback of 20 feet. The applicant proposes to construct a carport for a single family residential dwelling in a required side yard and provide a one-foot three-inch setback, which will require a 18-foot nine-inch special exception to the side yard setback regulations, and to construct a carport for a single family residential dwelling in a required front yard and provide a 20-foot setback, which will require a 30-foot special exception to the front yard setback regulations.

LOCATION: 10913 Calmar Street

APPLICANT: Carlos Montoya

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

1. A special exception to the side yard setback regulations of 18 feet nine inches is made to maintain a carport located one-foot three inches from the site's eastern side property line where a 20-foot side yard setback is required.

2. A special exception to the front yard setback regulations of 30 feet is made to maintain a carport 20 feet from front lot line (southern), within the 50-foot required front yard setback.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD¹:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in the construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE FRONT YARD²:

The Board of Adjustment may grant a special exception to the minimum front yard requirements in this section for a carport for a single family or duplex use when, in the opinion of the board:

- (A) there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space; and
- (B) the carport will not have a detrimental impact on surrounding properties.

In determining whether to grant this special exception, the board shall consider the following factors:

- (5) Whether the requested special exception is compatible with the character of the neighborhood.
- (6) Whether the value of surrounding properties will be adversely affected.

¹ Reference Sec.51A-4.402(c) of the Dallas Development Code.

² Reference Sec.51A-4.401(c) of the Dallas Development Code.

- (7) The suitability of the size and location of the carport.
- (8) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

STAFF RECOMMENDATIONS:

No staff recommendation is made on this or any request for a special exception to the side or front yard setbacks for carports 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: A(A) (Agricultural District)
- North: A(A) (Agricultural District)
- East: A(A) (Agricultural District)
- South: A(A) (Agricultural District)
- West: A(A) (Agricultural District)

Land Use:

The subject site is developed with a single family use. The areas to the north, east, south, 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

An existing house with 792 square feet of floor area was constructed in 1955, per DCAD. No permits are available for this age of structure on POSSE. A two-story addition was made without permits, increasing the floor area by 1,126 square feet for a total of 1,918 square feet. At this time, a carport was also constructed without permits. The purpose of these requests is to maintain a carport within the site's required side

and front yards. The property is zoned an A(A) Agricultural District, which requires a 20-foot side yard and a 50-foot front yard.

The Dallas Development Code states

1. Required side yards must be open and unobstructed except for fences and light poles up to 20-feet in height; however, carports may be provided a special exception under certain conditions³.
2. Required front yards must be open and unobstructed except for light poles up to 20-feet in height; however, carports may be provided a special exception under certain conditions⁴.

Since the carport is along the eastern side yard and located 30 feet into the required front yard, board approval is required.

Regarding the side yard, the submitted site plan and elevations show a 651-square-foot carport structure, 14-and-a-half feet-in-height and constructed with six-inch steel post, stone-wrapped columns. The elevation reveals an A-frame pitched metal roof. The main structure is a two-story house wrapped in hardie-plank siding with composition shingle roofing. The main door entry adjacent to the carport maintains an A-frame pitch and stone wrapped columns. No other details are provided.

Staff conducted a field visit of the site and the surrounding area and noted several structures and fences located within the required yards. Most residential structures in the area are set forward, closer than 50 feet from the street.

As of June 12, 2020, no letters of support/opposition have been received by staff.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height and prohibited materials the site will not adversely affect neighboring property. No evidence was submitted for review with this application.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the structure in the side and front yard setbacks to a carport as represented on these documents

Granting this special exception will not provide any relief to any existing or proposed noncompliance on the site including, but not limited to those related to fence standards or visual obstruction regulations.

³ Reference Section 51A-4.402(c) of the Dallas Development Code.

⁴ Reference Section 51A-4.401(c) of the Dallas Development Code.

TIMELINE:

- January 3, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 11, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- February 14, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the February 25th deadline to submit additional evidence for staff to factor into their analysis; and the March 6th deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:
- a copy of the application materials including the Building Official’s report on the application.
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- February 27, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included the Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Chief Planner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer.
- March 15, 2020: March BDA hearings were cancelled due to the emergency declaration.
- June 4, 2020: Delayed cases scheduled for June hearing dates. Applicants advised of the June 12th deadline to submit documentary evidence and the June 19th deadline to register to speak at the virtual hearing.

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

BOARD OF ADJUSTMENT ACTION: June 22, 2020

APPEARING IN FAVOR: Carlos Montoya, 10913 Calmar St. Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Hounsel

I move that the Board of Adjustment, in Appeal No. BDA 190-029, on application of Carlos Montoya, **grant** a special exception to the front and side yard setback regulations for a carport contained in the Dallas Development Code subject to the following conditions:

1. Compliance with the submitted site plan and elevation is required.
2. The carport structure must remain open at all times.
3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
4. All application building permits must be obtained.
5. No item (other than a motor vehicle) may be stored in the carport.

SECONDED: Agnich

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

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA190-041(OA)

BUILDING OFFICIAL’S REPORT: Application of Harold Lewis for a special exception to the fence height regulations at 4323 Aztec Drive. This property is more fully described as Lot 8, Block 1/6083, 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. The applicant proposes to construct a six-foot-high fence in a required front yard, which will require a two-foot special exception to the fence regulations.

LOCATION: 4323 Aztec Drive

APPLICANT: Harold Lewis

REQUEST:

A request for a special exception to the fence standards regulations related to height of two feet is made to construct and maintain a six-foot-high solid wood fence in one of the

site's two required front yards (Moffatt Drive) on a site developed with a single family home.

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)
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 developed with a single family home. The areas to the north, east, south, and west are developed with single family uses and vacant lots.

Zoning/BDA History:

1. BDA178-119, Property at 4323 Aztec Drive (the subject site)

On November 13, 2018, the Board of Adjustment Panel A granted a request for a variance to construct and maintain a one-story single family home structure with a total “slab area” of approximately 2,400 square feet or with a total “home size” of approximately 1,900 square feet, part of which is to be located five feet from one of the site’s two front property lines (Moffatt Avenue) or 20 feet into this 25-foot front yard setback on a site that is undeveloped and impose the submitted site plan as a condition.

GENERAL FACTS/STAFF ANALYSIS:

This request for a special exception to the fence standards regulations related to height of two feet is made to construct and maintain a six-foot-high solid wood fence in one of the site’s two required front yards (Moffatt Drive) on a site developed with a single family home.

The Dallas Development Code states that in all residential districts, except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.

The subject site is located at the northwest corner of Aztec Drive and Moffatt Avenue. The subject site has a 25-foot front yard setback along both street frontages. The site has a 25-foot front yard setback along Aztec 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 Moffatt Avenue, 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 Moffatt Avenue 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 front yard setback established by the lots to the west that are oriented southeast towards Moffatt Avenue.

The applicant has submitted a site plan and elevation of the proposal along Moffatt Avenue showing the proposed fence in the front yard setback reaches a maximum height of six feet.

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

- The location of the proposed fence is primarily five feet from the front lot line parallel to Moffatt Avenue or approximately 10 feet from the pavement line.

- The length of the proposed fence in the front yard setback parallel to Moffatt Avenue is approximately 68 feet and 20 feet perpendicular to Moffatt Avenue on the west side of the site in this front yard setback.

Staff conducted a field visit of the site and the surrounding area. Two other fences that appear to be above four feet-in-height were noted to be located south and north of the subject site. These existing fences have no recorded BDA history.

As of May 8, 2020, no letters have been submitted in support of or in opposition to this request.

The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach six feet-in-height) will not adversely affect neighboring property.

Granting this special exception with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding four feet in height to be located in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on this document.

Timeline:

- January 30, 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.
- March 17, 2020: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel C.
- March 20, 2020: April BDA hearings were cancelled due to the emergency declaration.
- March 23, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
 - an attachment that provided the public hearing date and panel that will consider the application; the March 31st deadline to submit additional evidence for staff to factor into their analysis; and the April 10, 2020 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 2, 2020: 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 following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction 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.

June 4, 2020: Delayed cases scheduled for June hearing dates. Applicants advised of the June 12th deadline to submit documentary evidence and the June 19th deadline to register to speak at the virtual hearing.

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

BOARD OF ADJUSTMENT ACTION: June 22, 2020

APPEARING IN FAVOR: Harold Lewis 1512 Rocky Creek Circle, Cedar Hill, TX.

APPEARING IN OPPOSITION: None.

MOTION: Hounsel

I move that the Board of Adjustment, in Appeal No. BDA 190-041, on application of Harold Lewis, **grant** a special exception to fence height regulations contained in the Dallas Development Code subject to the following condition:

Compliance with the submitted site plan/elevation is required.

SECONDED: Agnich

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-049(OA)

BUILDING OFFICIAL’S REPORT: Application of Masterplan represented by Karl A. Crawley for a special exception to the side yard setback regulations for tree preservation at 4434 Crooked Lane. This property is more fully described as Lot 4,

Block B/6400, and is zoned an R-1/2ac(A) Single Family District, which requires a side yard setback of 10 feet. The applicant proposes to construct a residential accessory structure and provide a two-foot six-inch side yard setback, which will require a seven-foot six-inch special exception to the side yard setback regulations.

LOCATION: 4434 Crooked Lane

APPLICANT: Masterplan represented by Karl A. Crawley

REQUEST:

A request for a special exception to the minimum side yard requirements to preserve existing trees including one with a diameter of 35 inches is made to construct a 532-square-foot accessory structure (additional two car garage) which will be located two-foot six-inches from the west side property line or seven-feet six-inches into the 10-foot west side yard setback on a property currently developed with a single family home.

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

Section 51(A)-4.402(d) of the Dallas Development Code specifies that the board may grant a special exception to the minimum side 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 (Tree Preservation):

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, the trees denoted on the submitted site plan, are worthy of preservation.

BACKGROUND INFORMATION:

Zoning:

Site: R-1/2 ac(A) (Single Family District)
North: R-1/2 ac(A) (Single Family District)
East: R-1/2 ac(A) (Single Family District)
South: R-1/2 ac(A) (Single Family District)
West: R-1/2 ac(A) (Single Family District)

Land Use:

The subject site is developed with a single-family structure. The areas to the north, east, west, and south 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 minimum side yard requirements to preserve existing trees of 35 feet in d focuses on constructing and maintaining 532-square-foot accessory structure (additional two car garage) which will be located two feet six inches from the west side property line or seven feet six inches into the 10-foot west side yard setback on a property currently developed with a single-family home.

The property is located in an R-1/2a(A) Single Family District which requires a minimum side yard of 10 feet.

The submitted site plan indicates an accessory structure (additional two-car garage will be located two-feet six-inches from the west side property line or seven-feet six-inches into the 10-foot north side yard setback. The site plan also indicates a 35-inch tree located 21 feet from the west side property line.

The applicant submitted a letter from a certified arborist indicating that the tree is worthy of preservation.

The Chief Arborist has determined that the tree in the rear yard identified on the Tree Preservation Plan is worthy of preservation. Placement of the designed driveway and structure would likely require the 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 an accessory structure that is located two feet seven inches from the site’s side property line (or seven feet five inches into the 10-foot side yard setback).

Timeline:

February 13, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

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

May 13, 2020: The Board of Adjustment Chief Planner/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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12, 2020 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.”

June 5, 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 Sustainable Development and Construction 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.

June 10, 2020: The City of Dallas Chief Arborist emailed the Board Administrator information regarding this application.

BOARD OF ADJUSTMENT ACTION: June 22, 2020

APPEARING IN FAVOR: Dallas Cothrum 2201 Main St. #1280 Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Hounsel

I move that the Board of Adjustment, in Appeal No. BDA 190-049, on application of Masterplan, represented by Karl Crawley, **grant** a special exception to the minimum side yard requirements to preserve an existing tree contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Agnich

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

NAYS: 0

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA190-065(OA)

BUILDING OFFICIAL’S REPORT: Application of Ariana Hajibashi for a special exception to the fence height regulations, and for a special exception to the fence standards regulations, and for a special exception to the single family regulations, and for a variance to the front yard regulations at 4156 Sleepy Lane. This property is more fully described as Lot 17, Block 4/6155, and is zoned an R-16(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 from the front lot line, limits the number of dwelling units to one, and requires a front yard setback of 35 feet. The applicant proposes to construct and maintain a nine-foot-high fence in a required front yard, which will require a five-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, to construct an additional dwelling unit for non-rental, which will require a special exception to the single family zoning use regulations and to construct a

single family residential structure and provide a 10-foot front yard setback, which will require a 25-foot variance to the front yard setback regulations.

LOCATION: 4156 Sleepy Lane

APPLICANT: Ariana Hajibashi

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 25 feet is made to construct and maintain a single family structure, part of which is to be located 10 feet from one of the site's two front property lines (on Midway Road) or 25 feet into this 35-foot front yard setback;
2. a request for a special exception to the single-family use regulations is made to construct and maintain a non-rentable additional dwelling unit.
3. a special exception to the fence standards related to the height of five feet is made to construct and maintain a nine-foot-tall solid masonry fence located in one of the site's two front yard setbacks (Midway Road); and,
4. A special exception to the fence standards related to fence panel materials/location from the front lot line is made to maintain the aforementioned, nine tall masonry fence, with panels with surface areas that are less than 50 percent open located less than five feet from the Midway Road property line.

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:

- not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be

developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

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

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

Section 51A-4.201(b)(1)(E)(i) of the Dallas Development Code specifies that 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.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS (Height and Opacity):

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.

STAFF RECOMMENDATION (front yard variance):

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-16 (A) zoning district by its restrictive area due to having two front yards and having 3,887 square feet less of buildable area than the similar lots in the same zoning district that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-16(A) zoning district (see application materials).
- The applicant submitted a document, as part of the original application indicating, among other things, that the proposed single-family structure on the subject site is

commensurate to 10 other lots having a single-family structure in the same R-16(A) zoning district. The document also notes the average lot size of 10 lots in this district is 12,085 square feet of buildable area while the subject lot only has 8,198 square feet.

STAFF RECOMMENDATION (single family regulations):

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.

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.

Zoning:

Site: R-16(A) (Single Family District)

North: R-16(A) (Single Family District)

East: R-16(A) (Single Family District)

South: R-16(A) (Single Family District)

West: R-16(A) (Single Family District)

Land Use:

The subject site is undeveloped. The area to the north is developed with a public park; the areas to the, 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-16(A) Single Family District which requires a minimum front yard setback of 35 feet. The property is located at the southwest corner of Sleepy Lane and Midway Road. Regardless of how the structure is proposed to be oriented to front Sleepy Lane, the lot has a 35-foot front yard setback along both street frontages in order to maintain the continuity of the front yard setback established by the lots to the southwest that front and are oriented towards Sleepy Lane and the continuity of the established front yard setback established by the lots to the south that front and are oriented towards Midway Road.

The request for a variance to the front yard setback regulations of 25 feet focuses on constructing and maintaining a two-story single family residential structure with 5,675 square feet of living space, part of which is to be located 10 feet from one of the site's two front property lines (on Midway Road) or 25 feet into this 35-foot front yard setback, as confirmed by the submitted site plan.

According to DCAD records, there are no improvements on the property addressed at 4156 Sleepy Lane.

The applicant submitted a document, as part of the original application indicating among other things, that the proposed single-family structure on the subject site is commensurate to 10 other lots having a single-family structure in the same R-16(A) zoning district. The document also notes the average lot size of 10 lots in this district is 12,085 square feet of buildable area while the subject lot only has 8,198 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-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 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 single family structure that would be located 10 feet from the Midway Road's front property line or 25 feet into this 35-foot front yard setback.

GENERAL FACTS/STAFF ANALYSIS (single family regulations):

This request for a special exception to the single family use regulations focuses on constructing and maintaining an additional dwelling unit on a site being developed with a two-story single-family home. The site is zoned R-16(A) where the Dallas Development Code permits one dwelling unit per lot.

The submitted site plan denotes the locations of two building footprints, the larger of the two is the proposed single family structure and the smaller of the two is denoted as a "1 Story Guest House".

This request centers on the function of what is proposed to be inside the smaller structure on the site – the "1 Story Guest House" structure, specifically its collection of rooms/features shown on the floor plan.

According to the submitted site plan, the main structure is proposed to contain 5,675 square feet of living space and the accessory structure is proposed at 846 square feet.

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.

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 "1 Story Guest House" as an additional dwelling unit.

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 a nine-foot-tall solid masonry fence located in one of the site's two front property lines (Midway Road).
- constructing and maintaining the aforementioned, nine-foot-tall solid masonry fence, with panels with surface areas that are less than 50 percent open located less than five feet from Midway Road 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 35-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 a nine-foot-tall solid masonry fence located less than five feet from Midway Road's front property line.

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

- The proposal is represented as being approximately 70 feet in length parallel to Midway Road and approximately 11 feet perpendicular to the street on the north/near center of the site on the Midway Road's required front yard; located approximately at the front property line or approximately 15 feet from the pavement line.

Staff conducted a field visit of the site and surrounding area and noted other fences that appeared to be above four feet-in-height in the required front yard on Midway Road (no recorded BDA History).

As of June 12, 2020, no letters have been submitted in opposition or in support of the request.

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

Granting these special exceptions to the fence standards related to height of up to five 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 Midway

Road's front lot line to be maintained in the locations and of the heights and materials as shown on these documents.

TIMELINE:

April 24, 2020: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

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

May 13, 2020: The Board of Adjustment Chief Planner/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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12, 2020 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."

June 5, 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 Sustainable Development and Construction 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: June 22, 2020

APPEARING IN FAVOR: Ariana Hajibashi 3807 Weeburn Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: **Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 190-065, on application of Ariana Hajibashi, **grant** to construct and/or maintain a nine-foot high fence having less than 50 percent open surface area as a special exception to fence standards regulations, to construct and maintain an additional dwelling unit as a special exception to the single-family zoning use regulations, and for a variance to the front yard setback regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan and elevation is required and the applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

SECONDED: **Agnich**

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-047(JM)

BUILDING OFFICIAL’S REPORT: Application of Santos Martinez to restore a nonconforming use at 5623 East Grand Ave. This property is more fully described as Lot 5 & 6, Block 2/1612, and is zoned a RR Regional Retail, which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming alcoholic beverage establishment use, which will require a special exception to the nonconforming use regulations.

LOCATION: 5623 East Grand Avenue

APPLICANT: Santos T. Martinez % La Sierra Planning Group

REQUEST:

A request for a special exception to restore/reinstate nonconforming use rights for an “alcoholic beverage establishment” use on the subject site that was discontinued for a period of six months or more is made to obtain a Certificate of Occupancy (CO) for this use.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE:

Section 51A-4.704(a)(2) of the Dallas Development Code states that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to this provision only if the owner can show that there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

Zoning:

<u>Site:</u>	RR Regional Retail District
<u>Northwest:</u>	CR Community Retail District
<u>Northeast:</u>	RR Regional Retail District
<u>Southeast:</u>	R-7.5(A) Single Family District
<u>Southwest:</u>	RR Regional Retail District

Land Use:

The subject site is developed with a few structures containing multiple uses according to permit records including the vacant bar, a tire shop, and personal service uses (tattoo parlor and hair salon). The area to the northwest is developed with single family uses; to the northeast is a general merchandise or food store with fueling station; to the southeast are a public park and fire station; and, to the southwest are retail and personal service uses.

Zoning/BDA History:

No history.

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on restoring/reinstating nonconforming use rights for an “alcoholic beverage establishment” use on the subject site that was discontinued for a period of six months or more in order for the applicant to obtain a Certificate of Occupancy (CO) for this use.

The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time”.

The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

The nonconforming use regulations also state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

The site is zoned an RR Regional Retail District that permits an “alcoholic beverage establishment” use only with a Specific Use Permit (SUP). According to documentary evidence provided by the representative (Attachment A), the alcoholic beverage establishment use has been operating since 1976 when the property was originally zoned an LC Light Commercial District which allowed the use by right. When Chapter 51A was adopted in 1988, the zoning district became an RR District which made the use legal nonconforming.

According to the representative and supporting documents found in Exhibits D and E, a transition in operators in September 2019 brought the conformity of the use into question. An active CO request for a change in operators from October 23, 2019 is pending due to a period of inactivity found by a lack of a Certificate of Occupancy (CO) and a TABC permit to operate under the existing CO legally from August 2017 to August 2018.

Please note that the original application has a discrepancy stated on page four by the representative that the period of inactivity was from January 2019 to August 2019. The representative provided documentary evidence in Exhibits A-P7 (Attachment A) including a statement on page one indicating the specific period of inactivity was from December 2017 to August 2018.

According to DCAD records, the site contains multiple structures erected between 1945 and 1966 and containing over 5,160 square feet of floor area including a cocktail lounge, warehouse, and retail strip center. The portion of the structure in question contains 974 square feet according to the site plan and past CO records.

Building Inspection has stated that these types of special exception requests originate from when an owner/officer related to the property applies for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of six months since the issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.

The applicant has the burden of proof in establishing the following related to the special exception request:

- There was a clear intent not to abandon the nonconforming “alcoholic beverage establishment” use on the subject site even though the use was discontinued for six months or more.

Granting this request would reinstate/restore the nonconforming “alcoholic beverage establishment” use rights that were lost when the use was abandoned for a period of six months or more.

If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

The applicant could make an application for an SUP that, if approved by the City Council, would make the “alcoholic beverage establishment” use on the property a conforming use.

Timeline:

February 19, 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.

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

March 20, 2020: April BDA hearings were cancelled due to the emergency declaration.

March 23, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the March 31st deadline to submit additional evidence for staff to factor into

their analysis; and the April 10, 2020 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 2, 2020: 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 following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction 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.

April 15, 2020: Additional evidence was submitted by the representative via email—see Exhibits A-P7 (Attachment A).

June 4, 2020: Delayed cases scheduled for June hearing dates. Applicants advised of the June 12th deadline to submit documentary evidence and the June 19th deadline to register to speak at the virtual hearing.

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

BOARD OF ADJUSTMENT ACTION: June 22, 2020

APPEARING IN FAVOR: Santos Martinez 12 Tanager Terrace Angel Fire, NM.

APPEARING IN OPPOSITION: None.

MOTION: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 190-047, on application of Santos Martinez of La Sierra Planning Group, **grant** the request to restore a nonconforming alcoholic beverage establishment use as a special exception to the use regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

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

Compliance with the use regulations of the Dallas Development Code is required

SECONDED: Sashington

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-050(OA)

BUILDING OFFICIAL’S REPORT: Application of Kristin Danielle Brasher for a special exception to the fence height regulations at 4610 Catina Lane. This property is more fully described as Lot 1, Block C/5534, and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct an eight-foot six-inch-high fence in a required front yard, which will require a four-foot six-inch special exception to the fence regulations.

LOCATION: 4610 Catina Lane

APPLICANT: Kristin Danielle Brasher

REQUESTS:

A request for a special exception to the fence height regulations of up to four-feet six-inches is made to construct a fence with a portion being four-feet six-inches high with metal on the top and a stone base, and partly an eight-foot-high stone fence, eight-foot six-inch and five-foot stone columns, and two seven-foot six-inch gates in the required 40-foot front yard on Catina Lane on a site being developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA189-141, Property located at 4610 Catina Lane (the subject site)

The Board of Adjustment Panel C, at its public hearing held on Monday, December 16, 2019, denied your request for a special exception to the fence height regulations of feet seven inches without prejudice.

The case report stated that the request was made to construct a fence with a maximum height of seven feet seven inches in the required 40-foot front yard on Catina Lane on a site being developed with a single-family home.
2. BDA112-039, Property located at 10757 Lennox Lane (the lot at the South corner of Royal Lane and Lennox Lane)

On May 14, 2012, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 3' and imposed the submitted site plan and elevation as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a solid stucco wall ranging in height from 6' 4" – 6' 8" (given grade changes on the property) with 7' high stucco columns in the site's Royal Lane 40' front yard setback on a site that is developed with a single-family home.
3. BDA978-231, Property located at 10757 Lennox Lane (the lot at the South corner of Royal Lane and Lennox Lane)

On October 19, 1998, the Board of Adjustment Panel C denied requests for special exceptions to the fence height and visual obstruction regulations without prejudice. The case report stated that the requests were made to construct and maintain an 8' high solid masonry wall in the front yard setback and in the required 45' visibility triangle at Royal Lane and Lennox Lane.
4. BDA 045-172, Property at 4610 Royal Lane (two lots north of the subject site)

On May 18, 2005, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 7' imposing the following condition: Compliance with the newly submitted "Preliminary Concept Plan/Site Plan and Elevation" dated May 18, 2005, is required. The case report stated that the request was made in conjunction with constructing a wall in the 40' Royal Lane front yard setback on a site developed with a single-family home.

GENERAL FACTS/STAFF ANALYSIS:

The purpose of this request for a special exception to the fence height standards is to construct and maintain a fence with a portion being four-feet six-inches high with metal on the top and a stone base, and partly an eight-foot-high stone fence, eight-foot six-inch and five-foot stone columns, and two seven-foot six-inch gates a four-foot six-inch metal/stone fence, with in the required 40-foot front yard on Catina Lane on a site being developed with a single family home. A solid fence with a maximum height of nine feet is allowed along Welch Road when located farther than 40 feet from the front lot line of Catina Lane without board approval and therefore is not part of this request.

The majority of the fence proposed in the front yard on Catina Lane is proposed to be located at the front property line or approximately 12 feet from the pavement line. The eight-foot-tall stone fence is located in the site's east property line within the front yard.

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. The subject site is zoned R-1ac(A) which requires a 40-foot front yard setback.

Staff conducted a field visit of the site and surrounding area and noted several other fences along Catina Lane and Lennox Lane located in front yard setback which appeared to be above four feet-in-height along Catina Lane and Lennox Lane located in the front yard setback, some of which have recorded BDA history (see the Zoning/BDA History section of this case report for details).

As of June 12, 2020, no letters have been received in opposition or support to this request.

The applicant has the burden of proof in establishing that the special exception to the fence height regulation of four-feet six-inches 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 four feet-in-height in the front yard setback to be constructed in the location and heights as shown on these documents.

Timeline:

February 21, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 6, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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 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 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 30, 2019: 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 interim Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction 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: June 22, 2020

APPEARING IN FAVOR: Danielle Brasher 4020 Centenary Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Medina

I move that the Board of Adjustment, in Appeal No. BDA 190-050, on application of Kristin Danielle Brasher, **grant** the request of this applicant to construct and/or maintain

an eight-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 site plan and elevation is required.

SECONDED: Pollock

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-027(JM)

BUILDING OFFICIAL’S REPORT: Application of Michael Short for special exceptions to the fence height regulations and fence standards regulations at 9140 Lynbrook Drive. This property is more fully described as Lot 20, Block G/7317, 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 and requires a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line. The applicant proposes to construct 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 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.

LOCATION: 9140 Lynbrook Drive

APPLICANT: Michael Short

REQUESTS: The following requests have been made to construct a fence in the front yard setback along Lake Haven Drive on the subject site:

1. A request for a special exception to the fence standards regulations related to the fence height of four feet to construct an eight-foot high fence in a required front yard, which will require a four-foot special exception to the fence regulations.
2. A request for a special exception to the fence standards regulations related to fence panels having less than 50 percent open surface area when located less than five feet from the front lot line to construct a solid wood fence within five feet of the front lot line.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS⁵:

The applicant has the burden of proof in establishing the following standard has been met: 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.

STAFF RECOMMENDATIONS:

No staff recommendation is made on this or any request for a special exception to the fence standards regulations 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)
- 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 developed with a single family use. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

⁵ Reference Section 51A-4.602(d)(3) of the Dallas Development Code.

1. DA189-091, Property at 9216 Lynbrook Drive (north of the subject site)

On September 16, 2019, the Board of Adjustment Panel C granted requests in one of the site's two 25-foot front yard setbacks (Lorwood Drive) for: 1) a variance to the front yard setback of up to 20 feet; and, 2) special exceptions to the fence regulations and imposed the following condition: compliance with the submitted site plan and revised elevation is required.

The case report stated the request was made to construct a 575-square-foot pool structure and an eight-foot-high solid wood fence with fence panels with a surface area less than 50 percent open less than five feet from the Lorwood Drive front lot line.

GENERAL FACTS/STAFF ANALYSIS

The subject site is zoned an R-7.5(A) Single Family District, which requires a 25-foot front yard. Corner lots in single family districts with frontage on two streets where one frontage is shorter than the other allow the longer frontage to be governed by the side yard regulations. However, if another structure has an established setback along the block face of the longer frontage, that side must maintain a front yard free from structures for block continuity. Furthermore, if a building line is established by plat or ordinance, the building line rules. In this case, the district requires two 25-foot front yards, but the plat dictates two 30-foot front yard setbacks for the subject site.

The purpose of these requests is to construct an eight-foot tall solid wood fence along the front lot line and in the front yard setback on Lake Haven Drive at the subject site.

The Dallas Development Code states

3. In all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard⁶.
4. 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 feet from the front lot line⁷.

⁶ Reference Section 51A-4.602(a)(2) of the Dallas Development Code.

⁷ Reference Section 51A-4.602(a)(3) of the Dallas Development Code.

Since the fence is proposed to exceed four feet in height within the front yard setback and the fence panels are proposed to have a surface area that is less than 50 percent open within five feet of the front lot line on Lake Haven Drive, board approval is required.

Regarding the fence height, the submitted site plan and fence elevations show an eight-foot high wood fence with horizontal cedar boards which encloses the entire 30-foot front yard along Lake Haven Drive. Regarding the openness of the fence, the proposed eight-foot high wood fence is proposed to be solid in nature. The proposed fence will not extend into the 30-foot front yard along Lynbrook Drive.

On May 15, 2019, a demolition permit was completed to remove the previous single-family home which included a wood fence that exceeded four feet in height but seems may have been located behind the front yard setback along Lake Haven Drive.

Staff conducted a field visit of the site and the surrounding area and noted one house east on Lake Haven Drive as the street turns south, a single family structure which currently maintains a solid fence that seems to be in one of the property's front yards, above four feet in height, with fence panels with surface area that is less than 50 percent open. No other fences were immediately found; however, in September, a house northeast along Lynbrook Drive was granted a front yard variance and special exceptions to the fence standards to construct and maintain a pool structure and an eight-foot tall solid wood fence in the front yard on Lorwood Drive.

As of June 12, 2020, three letters of support, one seemingly neutral letter, and one letter in opposition had been received by staff. Additionally, the applicant did submit a petition of support from surrounding property owners with twelve signatures. Furthermore, a letter was received on March 9, 2020 which was slightly neutral, stating, "no problem with my new neighbor's exception to the fence standard height," with a preference for the design clarifying "that the portion on the fence that runs parallel to any city street (most especially Lake Haven, in this case) have the metal posts to their house side (inside)." This letter was shared with the applicant.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height and prohibited materials the site will not adversely affect neighboring property. Photos of approximately 14 homes with fences taller than four feet and fence panels solid in nature were provided by the applicant with the submittal package.

If the board was to grant these special exceptions with a condition imposed that the applicant complies with the submitted site plan and fence elevation, it would require the portions of the fence which exceed four feet in height in the front yard setbacks and the portions with fence panels with surface area that is less than 50 percent open and

within five feet of the front lot line to be constructed and maintained in the locations and of the heights and materials as shown on these documents.

TIMELINE:

- January 2, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 11, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- February 14, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the February 25th deadline to submit additional evidence for staff to factor into their analysis; and the March 6th deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:
- a copy of the application materials including the Building Official’s report on the application.
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- February 27, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included the Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Chief Planner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer.
- March 15, 2020: March BDA hearings were cancelled due to the emergency declaration.
- June 4, 2020: Delayed cases scheduled for June hearing dates. Applicants advised of the June 12th deadline to submit documentary

evidence and the June 19th deadline to register to speak at the virtual hearing.

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

BOARD OF ADJUSTMENT ACTION: June 22, 2020

APPEARING IN FAVOR: Mike Short 8030 Eagle Trail Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION#1: Medina

I move that the Board of Adjustment, in Appeal No. BDA 190-027, on application of Michael Short, **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 fence elevation is required.

SECONDED: Pollock

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION#2: Medina

I move that the Board of Adjustment, in Appeal No. BDA 190-027, on application of Michael Short, **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 fence elevation is required.

SECONDED: Hounsel

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-064(OA)

BUILDING OFFICIAL'S REPORT: Application of Texas Permit and Development, represented by Danny Sipes, for special exception to the visual obstruction regulations at 9924 Carnegie Drive. This property is more fully described as Lot 1, Block 3/5343, and is zoned R-7.5(A), which requires a 20-foot visibility triangle at the driveway and alley approaches. The applicant proposes to construct a fence up to eight feet-in-height in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 9924 Carnegie Drive

APPLICANT: Texas Permit and Development
represented by Danny Sipes

REQUESTS:

A request for a special exception to the visual obstruction regulations is made to locate and maintain portions of an eight-foot-high solid wood fence and solid wood gates in the two 20-foot visibility triangles at the intersection of the street and drive approaches into the site from Peavy Road and in the 20-foot visibility triangle where the alley meets Peavy Road on a site developed with a single family home.

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 (visual obstruction regulations):

Denial.

Rationale:

- The Sustainable Development Department Senior Engineer has objections to the requests. The Senior Engineer finds that the fence compromises visibility of pedestrians, bicyclists, and motorists without enough sight distance to see vehicles

exiting (and potentially backing out) of the subject driveway onto a thoroughfare corridor if the aforementioned conditions are imposed as part of the requests.

- Staff concluded that requests for special exceptions to the visual obstruction regulations should not be granted because the items to be located and maintained in the visibility triangles do constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single Family District)
North: R-7.5(A) (Single Family District)
South: R-7.5(A) (Single Family District)
East: 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, east, south, and west are developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

The request for a special exception to the visual obstruction regulations on a site developed with a single family home focus on locating and maintaining a portion of an eight-foot-high solid wood fence and solid wood gates in the two 20-foot visibility triangles at the drive approaches into the site from Peavy Road and in the 20-foot visibility triangle at where the alley meets Peavy Road.

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

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and 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 property is located in R-7.5(A) District which requires the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.

A site plan and elevation have been submitted indicating portions of an eight-foot-high solid wood fence and solid wood gate in the two 20-foot visibility triangles at the drive approaches into the site from Peavy Road and in the 20-foot visibility triangle at where the alley meets Peavy Road.

The Sustainable Development Department Senior Engineer has objections to the requests and determined the proposed fence in the visibility triangle to cause a traffic hazard (see Attachment A).

The applicant has the burden of proof in establishing how granting these requests to maintain portions of an 8-foot high solid wood fence and solid wood gate in the two 20-foot visibility triangles at the drive approaches into the site from Peavy Road and in the 20-foot visibility triangle at where the alley meets Peavy Road 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 to be located and maintained in the two 20-foot visibility triangles at the drive approaches into the site from Peavy Road and in the 20-foot visibility triangle at where the alley meets Peavy Road, to that what is shown on these documents – portion of an eight-foot-high solid wood fence and a solid wood gates.

Timeline:

April 1, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

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

June 4, 2020: The Board of Adjustment Chief Planner/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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12, 2020 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.”

June 5, 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 Sustainable Development and Construction 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.

June 11, 2020: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked “recommends denial” (see Attachment A).

BOARD OF ADJUSTMENT ACTION: June 22, 2020

APPEARING IN FAVOR: Danny Sipes P.O. Box 3293 Forney, TX.
Jeff Cannon 9924 Carnegie Dr. Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Agnich

I move that the Board of Adjustment in Appeal No. BDA 190-064, **hold** this matter under advisement until **August 17, 2020**.

SECONDED: Hounsel

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

The meeting was adjourned at 2:53 P.M. on June 22, 2020.



CHAIRPERSON



BOARD ADMINISTRATOR



BOARD SECRETARY

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