

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL L1FN AUDITORIUM  
WEDNESDAY, AUGUST 16, 2017**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Joe Carreon, regular member, Marla Biekman, regular member, Wini Cannon, regular member and Matt Shouse, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Joe Carreon, regular member, Marla Biekman, regular member, Wini Cannon, regular member and Matt Shouse, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Neva Dean, Asst. Director, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donna Moorman, Chief Planner, Neva Dean, Asst. Director, and Trena Law, Board Secretary

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**11:07 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 16, 2017 docket.**

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**1:04 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**

To approve the Board of Adjustment Panel B June 21, 2017, public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2017**

**MOTION:** None

The minutes were approved.

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**FILE NUMBER:** BDA167-080(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Fred Brown for variances to the front and side yard setback regulations at 402 Pecan Drive. This property is more fully described as Lot 2, Block 6/7679, and is zoned R-5(A), which requires a 5 foot side yard setback and requires a front yard setback of 20 feet. The applicant proposes to construct and maintain a structure and provide a 10 foot front yard setback measured at the foundation, which will require a 10 foot variance to the front yard setback regulations, and provide a 2 foot 6 inch side yard setback measured at the foundation, which will require a 2 foot 6 inch variance to the side yard setback regulations.

**LOCATION:** 402 Pecan Drive

**APPLICANT:** Fred Brown

**REQUESTS:**

The following requests are made on a site that is undeveloped:

1. A variance to the front yard setback regulations of 10’ is made to construct and maintain a 1 ½ -story single family home structure to be located 10’ from the site’s front property line or 10’ into this 20’ front yard setback.
2. A variance to the side yard setback regulations of 2’ 6” is made to construct and maintain the aforementioned structure to be located 2’ 6” from the site’s northern side property line or 2’ 6” into this 5’ required side yard setback.

**STANDARD FOR A VARIANCE:**

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 (front and side yard variances):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the variances should be granted because of the restrictive area of the subject site at only 4,000 square feet in the R-5(A) zoning district where lots are typically 5,000 square feet. Furthermore, the applicant had substantiated how this feature precludes the lot from being developed in a manner commensurate with the development upon other parcels of land with the same R-5(A) zoning. The applicant submitted a list of 10 other properties in the zoning district where the average “livable area” is approximately 2,300 square feet – larger than that was is proposed on the site at approximately 2,000 square feet.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-5(A) (Single family district 5,000 square feet)
- North: R-5(A) (Single family district 5,000 square feet)
- South: R-5(A) (Single family district 5,000 square feet)
- East: R-5(A) (Single family district 5,000 square feet)
- West: R-5(A) (Single family district 5,000 square feet)

**Land Use:**

The subject site is undeveloped. The areas to the north, east, and south are undeveloped; and the area to the west is a combination of undeveloped land and single family use.

**Zoning/BDA History:**

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

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

- The request for a variance to the front yard setback regulations of 10’ focuses on constructing and maintaining a 1 ½ -story single family home structure with an

approximately 1,500 square foot building footprint to be located 10' from the site's front property line or 10' into the 20' required front yard setback on a site that is undeveloped.

- A 20' front yard setback is required in the R-5(A) zoning district.
- The submitted site plan represents that the proposed structure is located 10' from the front property line or 10' into the 20' required front yard setback.
- According to DCAD records, there are "no main or additional improvements" for property addressed at 402 Pecan Drive.
- The subject site is flat, rectangular in shape (100' x 40'), and 4,000 square feet in area. The site is zoned R-5(A) where lots are typically 5,000 square feet in area.
- The applicant submitted a document (Attachment A) that denoted that the "livable area" of the proposed home on the subject site was approximately 2,000 square feet, and that the average "livable area" of 10 other properties zoned R-5(A) was approximately 2,300 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-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-5(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 10' from the site's front property line (or 10' into the 20' required front yard setback).

#### **GENERAL FACTS/STAFF ANALYSIS (side yard variance):**

- The request for a variance to the side yard setback regulations of 2' 6" focuses on constructing and maintaining a 1 ½ -story single family home structure with an approximately 1,500 square foot building footprint to be located 2' 6" from the site's northern side property line or 2' 6" into this 5' required side yard setback on a site that is undeveloped.
- A 5' side yard setback is required in the R-5(A) zoning district.
- The submitted site plan represents that the proposed structure is located 2' 6" from the northern side property line or 2' 6" into this 5' required side yard setback.
- The submitted site plan represents that a detached garage accessory structure is located approximately 1' away from the northern side property line or 4' into the 5' side yard setback, however the Dallas Development Code states that in a residential district, a person need not provide a side yard setback for a structure accessory to a

residential use if the structure does not exceed 15' in height and is located in the rear 30 percent of the lot.

- According to DCAD records, there are “no main or additional improvements” for property addressed at 402 Pecan Drive.
- The subject site is flat, rectangular in shape (100' x 40'), and 4,000 square feet in area. The site is zoned R-5(A) where lots are typically 5,000 square feet in area.
- The applicant submitted a document (Attachment A) that denoted that the “livable area” of the proposed home on the subject site was approximately 2,000 square feet, and that the average “livable area” of 10 other properties zoned R-5(A) was approximately 2,300 square feet.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-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-5(A) zoning classification.
- If the Board were to grant the side yard variance request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 2' 6” from the site’s northern side property line or 2' 6” into this 5' required side yard setback.

**Timeline:**

- April 21, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 11, 2017: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 4<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.

August 1, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

August 1, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner, the Sustainable Development and Construction Interim Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department 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 AUGUST 16, 2017**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Cannon

I move to grant that the Board of Adjustment grant application **BDA 167-080(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. 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: Carreon

AYES: 5 – Hounsel, Carreon, Beikman, Cannon, Shouse

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

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FILE NUMBER: BDA167-085(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Rufina Villareal, represented by Carlos Vega, for a variance to the side yard setback regulations at 1610 Melbourne Avenue. This property is more fully described as Lot 6, Block 10/4750, and is zoned R-

7.5(A), which requires side yard setback of 5 feet. The applicant proposes to construct and maintain a structure and provide a 4 foot 4 inch side yard setback, which will require an 8 inch variance to the side yard setback regulations.

**LOCATION:** 1610 Melbourne Avenue

**APPLICANT:** Rufina Villareal  
Represented by Carlos Vega

**REQUEST:**

A request for a variance to the side yard setback regulations of 8” is made maintain an addition to a 1940’s single family home nonconforming structure, located 4’ 4” from the site’s western side property line or 8” into this 5’ side yard setback.

**STANDARD FOR A VARIANCE:**

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 variance of 8” should be granted because of the restrictive area of the subject site at approximately 7,200 square feet in the R-7.5(A) zoning district where lots are typically 7,500 square feet. Furthermore, the applicant had substantiated how this feature precludes the lot from being developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning. The applicant submitted a list of 10 other properties in the zoning district where the average square footage of development is approximately 2,000 square feet – slightly larger than that was is proposed to be retained on the site at approximately 1,800 square feet.

- Granting the variance would not be contrary to public interest given that the structure that the applicant seeks variance aligns with the existing nonconforming structure on the site built in the 40's, and that the new addition encroaching into the setback is only 8" into the required 5' setback and approximately 27.5' in length.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a single family home. The area 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:**

- The request for a variance to the side yard setback regulations of 8" focuses on maintaining a 660 square foot addition that aligns with a one-story single family home structure constructed (according to DCAD) in 1940, located 4' 4" from the site's western side property line or 8" into this 5' required side yard setback.
- A 5' side yard setback is required in the R-7.5(A) zoning district.
- The submitted site plan denotes the "existing single story addition 660 SF" and the "existing single story frame house" is located 4' 4" from the site's western side property line. The submitted site plan also denotes an "existing garage" structure located approximately 4' from the site's eastern side yard setback.
- According to DCAD records, the "main improvement" for property addressed at 1610 Melbourne Avenue is structure built in 1940 with 1,157 square feet of living/total area, and that "additional improvements" is a 200 square foot detached garage. Because records show that the main improvement/structure on this site was built in the 40's, it is assumed that the "existing single story frame house" and the "existing garage" are nonconforming structures.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.

- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The applicant has chosen to seek variance to the side yard setback regulations for only the "existing single story addition" in the western side yard setback, and not to remedy/address the nonconforming aspect of the "existing single story frame house" and "existing garage" in the side yard setbacks.
- The addition in the side yard setback that the applicant is seeking variance is approximately 18 square feet (approximately 8" x approximately 27.8').
- The subject site is flat, rectangular in shape (approximately 145' x 50'), and according to the submitted application is 0.166 acres (or approximately 7,230 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant's representative has submitted documentation that denotes that the square footage on the subject site is 1,817 and that the average of 10 other properties in the area zoned R-7.5(A) is 2,035.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same 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 request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document– which in this case is a structure is located 4' 4" from the western side property line or 8" into this 5' required side yard setback.
- Note that the applicant is aware that granting the request for a variance to the side yard setback regulations will not provide any relief to the existing nonconforming structures in the side yard setbacks since the applicant did not request that the Board consider this aspect as part of this application.

**Timeline:**

May 25, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 11, 2017: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the July 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 4<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.

July 18, 2017: The Board Administrator emailed the applicant's representative the definition of nonconforming structure and the provision from the Dallas Development Code related to nonconforming structures (51A-4.704(c)) to which the applicant's representative responded by stating that the request was to be limited to the recent addition made to the decades old home on the property.

July 25, 2017: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

August 1, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner, the Sustainable Development and Construction Interim Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION    AUGUST 16, 2017**

**APPEARING IN FAVOR:**            No one

**APPEARING IN OPPOSITION:**    No one

**MOTION: Cannon**

I move to grant that the Board of Adjustment grant application **BDA 167-085(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. 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: Carreon**

**AYES:** 5 – Hounsel, Carreon, Beikman, Cannon, Shouse

**NAYS:** 0

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA167-089(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Misael Gil for a special exception to the side yard setback regulations for a carport at 7323 Barney Street. This property is more fully described as Lot 4, Block 28/6237, and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a carport in a required side yard and provide a 1 foot setback, which will require a 4 foot special exception to the side yard setback regulations.

**LOCATION:** 7323 Barney Street

**APPLICANT:** Misael Gil

**REQUEST:**

A request for a special exception to the side yard setback regulations of 4’ is made to maintain a carport located 1’ from the site’s western side property line or 4’ into this 5’ required side yard setback on a site developed with a single family home structure/use.

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

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 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 RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is, when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a single family home. The area 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:**

- This request for a special exception to the side yard setback of 4' focuses on maintaining an approximately 260 square foot carport 1' from the site's western side property line or 4' into the site's western 5' required side yard setback, on a site developed with a single family home structure/use.
- A 5' side yard setback is required in the R-7.5(A) zoning district.
- The applicant has submitted a document (a site plan/elevation) indicating the size and materials of the carport, and its location 1' from the site's western side property line.
- The submitted site plan/elevation represents the following:
  - The carport is approximately 26' in length and approximately 10' in width (approximately 260 square feet in total area) of which approximately 40 percent is located in the western 5' side yard setback.
  - Roof line of carport aligns with roof line of single family home.
  - Composition shingle roof.
  - Horizontal siding over 2x4 studs.

- The Board Administrator conducted a field visit of the area approximately 500 feet east and west of the subject site and noted one other carport that appeared to be located in a side yard setback. A carport that appeared to be located in a side yard was noted immediately south of the subject site with no recorded BDA history.
- As of August 4, 2017, no letters had been submitted in support of or in opposition to this application.
- The applicant has the burden of proof in establishing the following:
  - that granting this special exception to the side yard setback regulations of 4' will not have a detrimental impact on surrounding properties.
- Granting this request and imposing the following conditions would require the carport to be maintained in the location and of the heights and materials as shown on these documents:
  1. Compliance with the submitted site plan/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 applicable building permits must be obtained.
  5. No item (other than a motor vehicle) may be stored in the carport.

**Timeline:**

- June 8, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 11, 2017: The Board Administrator emailed the applicant the following information:
  - a copy of the application materials including the Building Official's report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the July 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 4<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."
- August 1, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner, the Sustainable Development and Construction Interim Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief

Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION AUGUST 16, 2017**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Cannon**

I move to grant that the Board of Adjustment grant application **BDA 167-089(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. 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/elevation is required.
- The carport structure must remain open at all times.
- No lot-to-lot drainage is permitted in conjunction with this carport special exception.
- All applicable building permits must be obtained.
- No item (other than a motor vehicle) may be stored in the carport.

**SECONDED: Carreon**

**AYES: 5 – Hounsel, Carreon, Beikman, Cannon, Shouse**

**NAYS: 0**

**MOTION PASSED 5– 0 (unanimously)**

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**FILE NUMBER: BDA167-091(SL)**

**BUILDING OFFICIAL’S REPORT:** Application of James F. Nadeau, Jr. for a special exception to the fence standards at 4611 Walnut Hill Lane. This property is more fully described as Lot 1, Block A/5540, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 9 foot 6 inch high fence in a required front yard, which will require a 5 foot 6 inch special exception to the fence standards.

**LOCATION: 4611 Walnut Hill Lane**

**APPLICANT: James F. Nadeau, Jr.**

**REQUEST:**

A request for a special exception to the fence standards related to fence height of 5' 6" is made to maintain a fence higher than 4' in the front yard setback (an 8' high combination solid cedar wood slat fence with stone base with 9' 2" high stone columns and two, 7' 2" high gates parallel to the street; a 7' 11" high solid cedar wood slat fence with 9' 4" high stone columns on the east side of the site perpendicular to the street in the front yard setback, and a 7' 2" high solid cedar wood slat fence with 7' 10" high stone columns on the west side of the site perpendicular to the street in the front yard setback) on a site that is 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 1 acre)  
North: R-1ac(A) (Single family district 1 acre)  
South: R-1ac(A) (Single family district 1 acre)  
East: R-1ac(A) (Single family district 1 acre)  
West: R-1ac(A) (Single family district 1 acre)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA145-031, Property located at 4686 Meadowood Road (the property approximately three lots southeast of the subject site)
2. BDA 990-271, Property at 9963 Rockbrook Lane (the property south of the subject site)

On March 18, 2015, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 5' and imposed the submitted revised site plan and elevation dated March 18, 2015 as a condition.

The case report stated that the constructing and maintaining a 9' high solid brick fence to replace an approximately 7' high solid brick fence parallel to Walnut Hill Lane on the north, and an 8' high solid brick to replace an 8' high open picket perpendicular to Walnut Hill Lane on the west adjacent to Meadowood Road on a site developed with a single family home use.

On May 15, 2000, the Board of Adjustment Panel C granted requests for special exceptions to the single family use and fence height regulations of 2' and imposed the following conditions: to the single family use special exception: compliance with the submitted site plan is required; and applicant must submit a valid deed restriction prohibiting the additional dwelling unit of the site from being uses as a rental accommodation; and to fence height special exception: 1) In conjunction with retaining the 6 foot high brick/masonry wall, a tree survey

or a landscape plan documenting the trees be retained adjacent to the existing wall must be submitted, and 2) a landscape plan documenting the retention of ivy vines on the existing wall must be submitted.

The case report stated the requests were made to maintain an existing 6' high brick wall along Walnut Hill Lane and construct/maintain an extension of this wall an additional 90 feet westward along Walnut Hill Lane, and to construct/maintain a pool house/dwelling unit structure on the site.

3. BDA167-025, On August 17, 2005, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 4' 10" and imposed the submitted site plan and elevation as a condition. The case report stated the request was made to construct and maintain an 8' high solid stucco fence with 8'10" stucco columns and 8' metal gates in the front yard setback on a site that is developed with a single family house.
- On March 22, 2017, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 4' 3" and imposed the submitted site plan and elevation as a condition. The case report stated the request was made to construct and maintain a fence higher than 4' in the required front yard (a 5' 7" high open steel picket fence with 6' 3" high stone columns, and a 5' 7" high open steel picket gate with 6' 3" high stone columns topped with 2' high decorative lamps parallel to the street, and an 8' high solid wood fence on the east side of the site perpendicular to the street in the required front yard) on a site that is being developed with a single family home.
4. BDA 145-098, Property at 4606 Walnut Hill Lane (two lots southwest of the subject site)
- On September 21, 2015, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' 6" and imposed the submitted site plan and partial site plan/elevation as a condition. The case report stated that the request was made to construct and maintain a 7' high stone wall with 7' 6" high stone columns, and an approximately 6' 6" – 8' 6" high gate flanked with 8' 6" high entry columns on a site developed with a single family home.

**GENERAL FACTS/STAFF ANALYSIS:**

- The request for a special exception to the fence standards related to fence height of 5' 6" focuses on maintaining an 8' high combination solid cedar wood slat fence with stone base with 9' 2" high stone columns and two, 7' 2" high gates parallel to the street; a 7' 11" high solid cedar wood slat fence with 9' 4" high stone columns on the east side of the site perpendicular to the street in the front yard setback, and a 7' 2" high solid cedar wood slat fence with 7' 10" high stone columns on the west side of

the site perpendicular to the street in the front yard setback) on a site that is developed with a single family home.

- The subject site is zoned R-1ac(A) which requires a 40' front yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and elevations of the proposal with notations indicating that the proposal reaches a maximum height of 9' 4".
- The submitted site plan denotes the following:
  - The proposal over 4' in height in the front yard setback is represented as being approximately 170' in length parallel to the street, approximately 10' from the front easement line, and an approximately 30' in length perpendicular to the street on the east and west sides of the site in the 40' front yard setback.
  - The proposal is represented as being located approximately 4' from the front easement line or approximately 15' from the pavement line; the gate proposal is represented as being located approximately 12' from the front property line or approximately 23' from the pavement line.
- Two single family lots are to the south of the subject site. Each of these lots has a fence in what appears to be the front yard setback over 4' in height. One of the fences appears to be the result of a fence special exception granted by the Board in 2000: BDA990-271 (see the BDA history section of this case report for further details, and the other (an approximately 5' high solid brick fence) has no recorded BDA history.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 400' east and west of the subject site) and noted a number of fences above 4 feet high which appeared to be located in a front yard setback. In addition to the fences mentioned above and in the BDA history section, an approximately 5' high solid wood fence was noted immediately east of the subject site.
- As of August 4, 2017, 4 letters had been submitted in support of the application, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence standards related to fence height of 5' 6" will not adversely affect neighboring property.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevations would require the proposal exceeding 4' in height to be maintained in the location and of the heights and materials as shown on these documents.

### **Timeline:**

- June 15, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- July 11, 2017: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 4<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.
- July 17, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- August 1, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner, the Sustainable Development and Construction Interim Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department 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 AUGUST 16, 2017**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Cannon**

I move to grant that the Board of Adjustment grant application **BDA 167-091(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. 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 elevations is required.

SECONDED: **Carreon**

AYES: 5 – Hounsel, Carreon, Beikman, Cannon, Shouse

NAYS: 0

MOTION PASSED 5– 0 (unanimously)

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**FILE NUMBER:** BDA167-084(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Santos T. Martinez for a variance to the rear yard setback regulations at 17787 Waterview Parkway. This property is more fully described as Lot 1F, Block A/8735, and is zoned LI, which requires a rear yard setback of 30 feet. The applicant proposes to construct and maintain a structure and provide a 14 foot rear yard setback, which will require a 16 foot variance to the rear yard setback regulations.

**LOCATION:** 17787 Waterview Parkway

**APPLICANT:** Santos T. Martinez

**REQUEST:**

A request for a variance to the rear yard setback regulations of 16’ is made to construct and maintain a ramp structure to the existing parking garage structure that, according to the application, would be located 16’ into the site’s 30’ rear yard setback on a site that is developed with office use/ structure (Convergys).

**STANDARD FOR A VARIANCE:**

The Dallas Development Code Section 51A-3.102(d)(10) 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:**

Denial

Rationale:

- Staff concluded there was no property hardship to the site that warranted a variance to the rear yard setback regulations. The applicant had not substantiated how the

features of the site (which is flat, rectangular in shape, and according to the application is 5.25 acres in area) have precluded it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same LI zoning classification (the site is currently developed an office structure and parking garage that complies with the Dallas Development Code), nor how granting this variance would not be to relieve a self-created hardship.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: LI (Light industrial)  
North: PD 780 (Planned Development)  
South: LI (Light industrial)  
East: City of Richardson  
West: PD 921 (Subarea 3)(SUP 764)  
(Planned Development, Specific Use Permit)

### **Land Use:**

The subject site is developed with an office structure/use. The area to the north is developed with a private school (The Dallas International School); the area to the east is the City of Richardson; the area to the south is developed with office use; and the area to the west is developed with open space (Texas A & M University Research Center).

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

1. BDA167-071, Property located at 17787 Waterview Parkway (the subject site)  
On May 17, 2017, the Board of Adjustment Panel B denied a request for a variance to the rear yard setback regulations of 16' without prejudice, and granted a request for a special exception to the landscape regulations and imposed the following condition: Compliance with the submitted second revised landscape plan is required. The case report stated that the variance request was made to construct and maintain construct and maintain a ramp structure to the existing parking garage structure that according to the application is proposed to be located 14' from the site's rear property line or 16' into the site's 30' rear yard setback; and that the landscape special exception was made to construct and maintain the aforementioned ramp structure and increase nonpermeable coverage, and not fully meet the landscape regulations,

more specifically to the required perimeter landscape buffer strip and plant group requirements.

(Note that on July 26, 2017, the applicant emailed the Board Administrator the following: "With respect to this application, the only element of this request is for relief to the rear yard setback requirement. We do not need any exceptions to the required landscape provisions. I was only hoping to point out that this proposed ramp is compatible with the previously approved plan. We do not need any amendments to the landscape plan that was previously approved for this property.")

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

- The request for a variance to the rear yard setback regulations of 16' focuses on constructing and maintaining an approximately 1,900 square foot ramp structure to the existing parking garage structure that, according to the application, would be located 16' into the required 30' rear yard setback on a site developed with an office use/structure (Convergys).
- The minimum side and rear yard for lots zoned LI is:
  - 30 feet where adjacent to or directly across and alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district; and
  - No minimum in all other cases.
- The subject site abuts PD 921 to the west where uses defined in the ordinance are those permitted in R-7.5(A) hence the subject site is required to provide a 30' rear yard setback.
- The submitted site plan represents that the "proposed ramp" structure is located approximately 16' from the rear property line or approximately 14' into the 30' required rear yard setback. However, the submitted application states a request is made of 16' to the required rear yard setback which would imply that a structure is proposed to be 14' from the rear property line or 16' into the 30' required rear yard setback.
- The Building Inspection Senior Plans Examiner/Development Code Specialist stated that the 14' dimension denoted on the submitted site plan is the interior dimension of the ramp, the width of the driveway surface, not the exterior dimension; and that the easement encroachment (whereby it appears that 1' of the proposed 16' wide ramp as described in a letter from the applicant would be located into a 15' wide DP & L and SWBT easement that borders the western boundary of the subject site) will be addressed by the applicant with the easement holder, not with the Board; and that if the applicant cannot get the easement abandoned or reduced, the ramp will not be issued a building permit.
- The application states that "Property owner seeks to utilize the second level of an existing parking garage. The installation of a new ramp is limited to one side of the

structure due to existing topography, easements, and structures. Previous access to second level has been converted into playground and recreational area for school by new owner.” (The applicant’s reference to access to the second level that has been converted into a playground by the new owner refers to the structure immediately north of the subject site that has since been converted from an office use to a school use). According to Collin CAD records, “Improvement #1” at 17787 Waterview Parkway is a “commercial” improvement built in 1993 with 150,000 square feet of area; and “Improvement #2 is a parking garage built in 1993 with 33,120 square feet.

- The site is flat, rectangular in shape, and according to the application is 5.25 acres in area. The site is zoned LI (Light Industrial).
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the rear 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 to rear yard setback regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same LI zoning classification.
  - The variance to rear yard setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same LI zoning classification.
- If the Board were to grant the request, and impose the submitted site plan as a condition, the structure in the rear yard setback would be limited to what is shown on this document – which, in this case, is a structure that appears to be located 16’ from the rear property line or 14’ into this 30’ rear yard setback.
- Note that the applicant would be required to address any structure over an easement with the easement holder, whereby if the applicant cannot get the easement abandoned or reduced, the ramp will not be issued a building permit even if the Board were to grant this request and impose the submitted site plan as a condition to this request.

**Timeline:**

May 17, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 11, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. 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”.

July 11, 2017: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the July 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 4<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."

July 25, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

August 1, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner, the Sustainable Development and Construction Interim Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department 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    AUGUST 16, 2017**

APPEARING IN FAVOR:                Santos Martinez, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Cannon**

I move that the Board of Adjustment, in Appeal No. **BDA 167-084**, hold this matter under advisement until **September 20, 2017**.

SECONDED: **Carreon**

AYES: 5 – Hounsel, Carreon, Beikman, Cannon, Shouse

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

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MOTION: **Beikman**

I move to adjourn this meeting.

SECONDED: **Cannon**

AYES: 5 – Hounsel, Carreon, Beikman, Cannon, Shouse

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

**1:20 P.M.** Board Meeting adjourned for **August 16, 2017**

\_\_\_\_\_  
CHAIRPERSON

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

\_\_\_\_\_  
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.