

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE  
TUESDAY, AUGUST 18, 2020**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Chair, Taylor Adams, regular member Sarah Lamb, regular member, Lawrence Halcomb, regular member, Jay Narey, regular member

MEMBERS ABSENT FROM BRIEFING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, Charles Trammell, Development Code Specialist, Jason Pool, Sign Code Specialist, Neva Dean, Assistant Director, Kris Sweckard, Director.

MEMBERS PRESENT AT HEARING: Cheri Gambow, Chair, Taylor Adams, regular member Sarah Lamb, regular member, Lawrence Halcomb, regular member, Jay Narey, regular member.

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, Charles Trammell, Development Code Specialist, Jason Pool, Sign Code Specialist, Jessie Farris, Arborist, Phil Erwin, Arborist, Neva Dean, Assistant Director, Kris Sweckard, Director.

**11:06 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 18, 2020** docket.

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**1:00 P.M.**  
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand

upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel A, June 23, 2020 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: August 18, 2020**

**MOTION: Narey**

Approval of the Board of Adjustment Panel A, June 23, 2020 public hearing minutes.

**SECONDED: Adams**

**AYES:** 5 – Gambow, Lamb, Adams, Halcomb, Narey

**NAYS:** 0

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

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**FILE NUMBER:** BDA190-074(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Maxwell Fisher for a special exception to the fence height regulations at 4211 Brookview Dr. This property is more fully described as Lot 10, Block A/5550, and is zoned an R-10(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 six-inch-high fence in a required front yard, which will require a two-foot six-inch special exception to the fence regulations.

**LOCATION:** 4211 Brookview Dr

**APPLICANT:** Maxwell Fisher

**REQUEST:**

A request for a special exception to the fence standards regulations related to height of two-feet six-inches is made to construct and maintain a four-foot, one-inch to six-foot-tall iron fence, with two four-foot, six-inch, and two six-foot, six-inch-tall masonry columns with a six-foot metal drive gate, in the required front yard 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-10(A) (Single Family District)
- North: R-10(A) (Single Family District)
- East: R-10(A) (Single Family District)
- South: R-10(A) (Single Family District)
- West: R-10(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 or vacant lots.

**Zoning/BDA History:**

There have not been any related board or zoning cases in the vicinity within the last five years.

**GENERAL FACTS/STAFF ANALYSIS:**

The request for a special exception to the fence height regulations focuses on constructing and maintaining a four-foot, one-inch to six-foot-tall iron fence, with two four-foot, six-inch, and two six-foot, six-inch-tall masonry columns with a six-foot metal drive gate, in the required front yard 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 zoned an R-10 (A) Single Family District which requires a 30-foot front yard setback.

According to the applicant, “the majority of the proposed fence within the Brookview yard would be ornamental iron and no greater than four feet-in-height, in compliance with the City's fence regulations. The portions of fence for which an exception is requested include two, four-foot, six-inch and two, six-foot, six-inch-tall masonry columns on each side of the driveway. The fence sections on each side of the driveway between said masonry columns would transition from four feet tall to six feet tall. Besides the two approximately 15-foot long sections of fence above four feet-in-height and the four columns exceeding four feet-in-height, the custom metal gate would be six feet tall.”

The site plan submitted shows, the fence higher than four feet is represented as being 15 feet-in-length parallel to the Brookview Drive in this required front yard, located on the front property line or approximately 28 to 36 feet from the pavement line.

Staff conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and no other fences that appear to be above four feet-in-height and located in a front yard setback.

As of August 7, 2020, one letter has been submitted in support and no letters in opposition to this request.

The applicant has the burden of proof in establishing that the special exception to the fence standards related to the height of two-feet six-inches 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:**

- June 25, 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.
- July 20, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 20, 2020: The Board Senior Planner emailed the applicant the following information:
  - a copy of the application materials including the Building Official’s report on the application.

- an attachment that provided the public hearing date and panel that will consider the application; the July 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 7<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 30, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board, and Mike Martin and Jason Pool Building Inspectors.

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

**BOARD OF ADJUSTMENT ACTION: August 18, 2020**

APPEARING IN FAVOR: Maxwell Fisher 2201 Main St. #1280 Dallas, TX  
 Roy Bailey 3312 Marquette University Park, TX  
 Tina Bailey 3312 Marquette University Park, TX

APPEARING IN OPPOSITION: None

**MOTION: Lamb**

I move that the Board of Adjustment in Appeal No. BDA 190-074 on application of Maxwell Fischer **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: Narey**

AYES: 5 – Gambow, Adams, Halcomb, Lamb, Narey

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

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**FILE NUMBER:** BDA190-076(OA)

**BUILDING OFFICIAL'S REPORT:** Application of McDonalds represented by ClayMoore Engineering. This property is more fully described as Lot 1A, Block A/4231, and is zoned a CR Community Retail District, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 1415 E Illinois Avenue.

**APPLICANT:** McDonalds  
represented by ClayMoore Engineering.

**REQUEST:**

A request for a special exception to the landscape regulations is made to demolish, construct, and maintain a fast-food restaurant with drive-through and not fully meet the landscape regulations or, more specifically, to not provide the required street buffer zone and fully comply with minimum zoning standards.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:**

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property.
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

- the extent to which there is residential adjacency.
- the topography of the site.
- the extent to which landscaping exists for which no credit is given under this article.

- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The chief arborist recommends approval of the special exception subject to an alternate landscape plan with the four added conditions stating specific landscape requirements for the property. The four conditions are listed on the alternate landscape plan.

**BACKGROUND INFORMATION:**

**Zoning**

Site: CR (Community Retail District)

North: CR (Community Retail District)

East: CR (Community Retail District)

South: CR (Community Retail District)

West: CR (Community Retail District)

**Land Use:**

The subject site is developed with a fast-food restaurant with drive-through. The area to the north is developed with a church use. The areas to the east, south, and west are developed with retail 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:**

This request for a special exception to the landscape regulations focuses on maintaining a fast-food restaurant with drive-through and not fully meet the landscape

regulations or, more specifically, to not provide the required street buffer zone and fully comply with minimum zoning standards.

The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period. In this case, the existing structure will be demolished. The construction of the new restaurant triggers compliance with landscape regulations.

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

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

The applicant is seeking a special exception to the landscaping requirements of Article X. In particular, the demolition and redesign of the property, and the placement of the DART rail over the property, limits the ability to construct a street buffer zone and fully comply with minimum zoning standards. Approval for an alternate landscape plan to conform to the continued uses on the property is requested.

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

The applicant has provided a landscape plan that complies with site tree requirements and interior parking lot tree requirements. Additional landscaping is provided for screening off-street parking and additional landscape areas around the building and west of the DART line. The applicant refers to enhanced vehicular pavement as integral stamped stained concrete and is indicated on the plan. Tree mitigation for the removal of seven protected live oak trees will be completed under Article X tree conservation ordinance requirements.

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

The site design will not conform to minimum Article X requirements for the street buffer zone landscape area or required street trees, and the plan does not adequately identify landscape design option points under Article X. Twenty points are required based on the lot size. Enhanced landscape areas along Lancaster Road and surrounding the building do not demonstrate suggested points.

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



The chief arborist recommends approval of the alternate landscape plan submitted on August 4, 2020. I do believe that full compliance with Article X will unreasonably burden the continued use of the property under a suitable design and will have no negative impact on neighboring properties. Amendments to remove damaged trees and to remove and replace large trees from inappropriate locations were provided for a more sustainable landscape design.

If the board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be provided an exception from providing street buffer zone and fully comply with minimum zoning standards.

**Timeline:**

July 17, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

July 20, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

July 20, 2020: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the July 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 7<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 30, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist,

the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board, and Mike Martin and Jason Pool Building Inspectors.

August 4, 2020: The City of Dallas chief arborist submitted a memo regarding this request (see Attachment A)

August 4, 2020: The applicant submitted a revised site plan (see Attachment B)

**BOARD OF ADJUSTMENT ACTION: August 18, 2020**

APPEARING IN FAVOR: Clay Cristy 1903 Central Dr. #406 Bedford, TX

APPEARING IN OPPOSITION: None

MOTION: **Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 190-076, on application of McDonalds USA, represented by ClayMoore Engineering, **grant** the request of this applicant for a special exception to the landscape requirements contained in the Dallas Development Code subject to the following condition:

Compliance with the submitted alternate landscape plan is required.

SECONDED: **Halcomb**

AYES: 5 – Gambow, Adams, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA190-043(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Mark Brinkerhoff for a special exception to the single family use regulations and to provide an additional electrical meter at 6833 Prosper Street. This property is more fully described as Lot 8, Block C/5048 and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one and requires that single family dwelling use in a single family, duplex, or townhouse may be supplied by not more than one electrical utility service and metered by no more than one electrical meter. The applicant proposes to construct and/or maintain an accessory dwelling unit for rent, which will require a special exception to the single family use regulations and to add an additional electrical utility service and metered, which will require a special exception to the single family zoning regulations.

**LOCATION:** 6833 Prosper Street

**APPLICANT:** Mark Brinkerhoff

**REQUEST:**

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

1. A request for a special exception to the single-family use regulations is made to construct and maintain a two-story accessory dwelling unit structure for rent on a site developed with a two-story single-family structure.
2. A request to install and maintain an additional electrical utility service and electrical meter on a site that is currently developed with a single-family use

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

The board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize a rentable accessory dwelling unit on a lot when, in the opinion of the board, the accessory dwelling unit will not adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to:

1. deed restrict the subject property to require owner-occupancy on the premises; and,
2. annually register the rental property with the city's single-family non-owner-occupied rental program.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE MORE THAN ONE ELECTRICAL UTILITY SERVICE OR MORE THAN ONE ELECTRICAL METER:**

The board may grant a special exception to authorize more than one electrical utility service or more than one electrical meter for a single family use on a lot in a single family zoning, duplex, or townhouse district when, in the opinion of the board, the special exception will:

1. not be contrary to the public interest;
2. not adversely affect neighboring properties; and,
3. not be used to conduct a use not permitted in the zoning district.

**STAFF RECOMMENDATION ACCESSORY DWELLING UNIT :**

No staff recommendation is made on this or any request for a special exception to authorize a rentable accessory dwelling unit since the basis for this type of appeal is when in the opinion of the board, the accessory dwelling unit will not adversely affect neighboring properties.

**STAFF RECOMMENDATION ADDITIONAL ELECTRICAL METER:**

No staff recommendation is made on this or any request for a special exception to authorize more than one electrical utility service or more than one electrical meter for a single family use on a lot in a single family zoning district since the basis for this type of appeal is when in the opinion of the board, the standards described above are met.

**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:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

This request for a special exception to the single-family use regulations focuses on constructing and maintaining a two-story additional dwelling unit and installing and maintaining a second electrical utility service and electrical meter on a site that is currently developed a two-story single-family structure.

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

The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot and that the Board of Adjustment may grant a

special exception to this provision and authorize a rentable accessory dwelling unit on a lot when, in the opinion of the board, the accessory dwelling unit will not adversely affect neighboring properties.

In addition, the Dallas Development Code states that in a single family, duplex, or townhouse district, a lot for a single family use may be supplied by not more than one electrical service, and metered by not more than one electrical meter; and that the Board of Adjustment may grant a special exception to authorize more than one electrical utility service or more than one electrical meter for a single family use on a lot in a single family zoning district when in the opinion of the board, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district

The Dallas Development Code states that *single family* means one dwelling unit located on a lot and that a *dwelling unit* means one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens<sup>1</sup>, one or more bathrooms<sup>2</sup>, and one or more bedrooms<sup>3</sup>.

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

These requests center on the function of what is proposed to be inside the smaller structure on the site – the accessory dwelling unit--specifically its collection of rooms/features shown on the floor plan. The site plan that does not indicate the location of the two electrical meters on the subject site.

According to DCAD records and the submitted site plan, the “main improvement” for the property at 6833 Prosper Street is a structure built in 2015 with 2,012 square feet of total living area with no additional improvements. Furthermore, the site plan indicates the proposed accessory dwelling unit contains 400 square feet of living area.

The applicant has the burden of proof in establishing that the accessory dwelling unit will not adversely affect neighboring properties. In addition, the applicant has the burden of proof in establishing that the additional electrical meter to be installed on the site will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and, 3) not be used to conduct a use not permitted in the zoning district.

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<sup>1</sup> KITCHEN means any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities. Reference §51A-2.102(57.1) of the Dallas Development Code, as amended.

<sup>2</sup> BATHROOM means any room used for personal hygiene and containing a shower or bathtub, or containing a toilet and sink. Reference §51A-2.102(8.1) of the Dallas Development Code, as amended.

<sup>3</sup> BEDROOM means any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sun rooms, and other similar rooms are considered bedrooms. Reference §51A-2.102(9) of the Dallas Development Code, as amended.

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. However, granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements).

The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant deed restrict the subject property to require owner-occupancy on the premises and to annually register the rental property with the city's single family non-owner occupied rental program.

**Timeline:**

February 5, 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 A.

March 23, 2020: The Sustainable Development and Construction Department Senior Planner emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the board's docket materials;
- the criteria/standards that the board will use in their decision to approve or deny the requests; and
- The Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 2, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the public hearings. Review team members in attendance included the following: Board of Adjustment Chief Planner/Board Administrator, Building Inspection Senior Plans Examiner, Senior Engineer, Board of Adjustment Senior Planner, and Assistant City Attorney to the Board.

May 19, 2020: The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action on this application request until the next public hearing to be held on June 23, 2019 to give the applicant the opportunity to provide support for this request.

May 21, 2020: The Board Administrator wrote the applicant a letter of the board's action; the June 3<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 12<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

June 3, 2020: The applicant provided a letter of support as requested by the Board Members during the May 19 public hearing (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: August 18, 2020**

APPEARING IN FAVOR: Mark Brinkerhoff 6833 Prosper St. Dallas, TX  
Melissa Kingston 5301 Spring Valley Rd. #200 Dallas, TX

APPEARING IN OPPOSITION: None.

**MOTION#1: Halcomb**

I move that the Board of Adjustment, in request No. BDA 190-043 on application of Mark Brinkerhoff, **grant** the request to construct and maintain an accessory dwelling unit as a special exception to the single family use regulations requirements in the Dallas Development Code, subject to the following conditions:

1. The applicant must deed restrict the subject property to require owner-occupancy on the premises.
2. The applicant must annually register the rental property with the city's single-family non-owner-occupied rental program.

**SECONDED: Adams**

AYES: 5 – Gambow, Adams, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

**MOTION#2: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 190-043, on application of Mark Brinkerhoff, **grant** the request to install and maintain an additional electric meter on the property as a special exception to the single family regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not be contrary to the public interest, will not adversely

affect neighboring property, and will not be used to conduct a use not permitted in the district where the building site is located.

**SECONDED: Halcomb**

**AYES: 5 – Gambow, Adams, Lamb, Halcomb, Narey**

**NAYS: 0**

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

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**FILE NUMBER: BDA190-044(OA)**

**BUILDING OFFICIAL'S REPORT:** Application of Brian Baughman for a special exception to the sign regulations at 5500 Greenville Avenue. This property is more fully described as Block 1/5409 and is zoned an MU-3 Mixed Use District, which limits the number of detached signs on a premise to one per street frontage other than expressways and allows only one detached sign for every 450 feet of frontage. The applicant proposes to construct and maintain one additional detached premise sign, on a nonresidential premise, which will require a special exception to the sign regulations.

**LOCATION: 5500 Greenville Avenue**

**APPLICANT: Brian Baughman**

**REQUEST:**

A request for a special exception to the sign regulations is made to remodel and maintain an existing additional detached premise sign on a site that is developed with a shopping mall.

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

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

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



Denial

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the April 2<sup>nd</sup> staff review team meeting that that the applicant had not substantiated that strict compliance with the requirement of the sign regulations (in this case, the site's Greenville frontage being limited to one sign) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

**BACKGROUND INFORMATION:**

**Zoning:**

**Site:** MU-3 (Mixed Use District)

**North:** MU-3 (Mixed Use District)

**East:** PD No. 916 ((Planned Development District) & MU-3 (Mixed Use District)

**South:** PD No. 610 ((Planned Development District)

**West:** MU-3 (Mixed Use District)

**Land Use:**

The site is developed with a mix of retail and personal service uses. The area to the north, south, east and west are developed with mixed use and multifamily uses.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS (additional detached sign):**

The property consists of over 15.79 acres of land developed as with a mix of retail and personal service uses. The request for a special exception to the sign regulations focuses on the remodeling and maintenance of an additional sign at the frontage along Greenville Avenue.

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

The submitted site plan indicates the location of two detached non-monument signs, (represented as “existing sign number one and number two”) on the site’s Greenville Avenue frontage, hence this request for a special exception to the sign regulations for an additional detached sign. A sign elevation denoting the second detached non-monument sign has been submitted.

The applicant submitted a document with the application that does not substantiate that strict compliance with the requirement of the sign regulations will result in inequity to the applicant without sufficient corresponding benefit to the city and its citizens.

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

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

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

**Timeline:**

February 7, 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 A.

March 23, 2020: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; April 28<sup>th</sup> deadline to submit additional evidence for staff to factor

into their analysis; and the June 3<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 12<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.”

June 5, 2020:

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

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

June 23, 2020:

The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action on this application request until the next public hearing to be held on August 18, 2020 to give the applicant the opportunity to provide support for this request.

June 25, 2020:

The Board Administrator wrote the applicant a letter of the board's action; the July 28 deadline to submit additional evidence for staff to factor into their analysis; and the August 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

July 30, 2020:

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

Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board, and Mike Martin and Jason Pool Building Inspections.

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

**BOARD OF ADJUSTMENT ACTION: August 18, 2020**

**APPEARING IN FAVOR:** Brian Baughman 125 Hillside Dr. Greenville, SC

**APPEARING IN OPPOSITION:** None.

**MOTION: Lamb**

I move that the Board of Adjustment in Appeal No. BDA 190-044, **hold** this matter under advisement until September 22, 2020.

**SECONDED: Halcomb**

**AYES: 5 – Gambow, Adams, Lamb, Halcomb, Narey**

**NAYS: 0**

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

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**FILE NUMBER: BDA190-061(OA)**

**BUILDING OFFICIAL’S REPORT:** Application of J. Antony Sisk represented by Jeff Baron for a variance to the landscape regulations, for a special exception to the fence height regulations, and for a special exception to the fence standard regulations at 6611 Country Club Cir. This property is more fully described as Lot 6 in Block M/2798 and is zoned Conservation District No. 2 (Tract 3), 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, and requires mandatory landscaping. The applicant proposes to construct a 10-foot six-inch high fence in a required front yard, which will require a six-foot six-inch 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, and to provide an alternate landscape plan, which will require a variance to the landscape regulations.

**LOCATION: 6611 Country Club Circle**

**APPLICANT:** J. Antony Sisk and Associates  
represented by Jeff Baron

**REQUEST JUNE 23, 2020:**

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

1. A request for a variance to the landscape regulations is made to construct and maintain a fence in one of the site's two required front yards (Gaston Avenue) – Conservation District No. 2 landscaping provisions prohibit fences and walls in the front yard;
2. A special exception to the fence standards relating to placing the aforementioned fence, a three-foot to nine-foot-high solid wood and brick fence, an eight-and-one-half-foot brick retaining wall, and an eight-and-a-half-foot brick fence with a 10-foot six-inch pedestrian gate, in one of the site's two front yards (Gaston Avenue);
3. A special exception to the fence standards related to fence panel materials/location from the front lot line is made to maintain the aforementioned fence with panels with surface areas that are less than 50 percent open located less than five feet from the Gaston Avenue front lot line.

**REQUEST AUGUST 18, 2020:**

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

1. A request for a variance to the landscape regulations is made to construct and maintain a fence in one of the site's two required front yards (Gaston Avenue) – Conservation District No. 2 landscaping provisions prohibit fences and walls in the front yard; and
2. A special exception to the fence standards relating to placing the aforementioned fence, a six-foot to seven-foot-high brick and wrought iron fence with a nine-foot high arch gate, and a 3 foot high water wall in one of the site's two front yards (Gaston Avenue).

The request for a special exception to the fence standards related to fence panel materials/location from the front lot line has been eliminated.

**STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot

depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

**STAFF RECOMMENDATION:**

Staff recommends approval, subject to the following condition:

- Compliance with the submitted site plan is required

Rationale:

- Staff concluded that two front yard setbacks along Gaston Avenue and County Club Circle, a slight slope, a need to create a safe area for children and animals, and a comparison table showing a fencible percentage of total fence area sufficiently proves that the subject site cannot be developed in a manner commensurate with the development upon other parcels. Granting this variance to allow the fence in the front yard would permit the applicant to use the property similarly to other properties within CD No. 2 and will not relieve a self-created or personal hardship.

**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.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD No. 2 (Conservation District)

North: CD No. 2 (Conservation District)  
South: CD No. 2 (Conservation District)  
East: CD No. 2 (Conservation District)  
West: PD No. 517 (Planned Development District)

**Land Use:**

The subject site is undeveloped. The areas to the north, south, and east are developed with residential uses, and the area to the west is developed with a golf course.

**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 variance to the landscape regulations focuses on constructing and maintaining a fence in one of the site's two required front yards (Gaston Avenue) – a three-foot to nine-foot-high solid wood and brick fence, an eight-and-one-half-foot brick retaining wall, and an eight-and-a-half-foot brick fence with a 10-foot six-inch pedestrian gate. However, Conservation District No. 2 landscaping provisions prohibit fences and walls in the front yard; therefore, a variance to the landscape provision to allow the proposed fence as described, is requested.

CD No. 2 (Tract 3) landscaping refers back to Article X which allows special exceptions. However, the additional landscape requirements relating to the fence and walls being prohibited in CD No. 2 are not found in Article X and require a landscape variance instead. The City of Dallas Chief Arborist will not submit a memo regarding the applicant's request since staff determined the a variance to the landscape regulations is only to address the fence in one of the site's two required front yards (Gaston Avenue). Additionally, the fencing standards for the site refer back to Chapter 51A 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; therefore, the proposed fence will require a six-foot six-inch special exception to the fence regulations, and a special exception to the fence regulations.

According to DCAD records, property addressed at 6611 Country Club Circle has no improvements. The property is a 26,967-square-foot vacant lot. The minimum lot size is 10,000 square feet in CD No. 2 (Tract 3).

The submitted revised site plan/elevation denotes – a six-foot to seven-foot-high brick and wrought iron fence with a nine-foot high arch gate, and a 3-foot-high water wall in one of the site’s two front yards (Gaston Avenue). Previously, portions of the fence panels were shown with surface areas that were less than 50 percent open and located less than five feet from the Gaston Avenue front lot line. However, a revised site plan indicates the materials will now comply with the opacity requirements. Additionally, the revised site plan shows a fence that runs approximately 145 feet-in-length parallel to Gaston Avenue, 60 feet perpendicular to Gaston Avenue on the northwest and northeast side of the site, and is located at the front property line, or 12 feet from the pavement line.

The subject site has a slight slope, is irregular in shape, and, according to the application, is 0.6 acres (or approximately 27,000 square feet) in area. While this is not technically a restrictive lot size, the other elements coupled with the double front yard setback requirement limit the usable yard space for possible fencing and privacy.

Staff conducted a field visit of the site and surrounding area and noted no other fences in the required front yard (the adjacent vacant lot has a fence that is located in the required front yard that is equal or less than four feet tall).

The applicant has the burden of proof in establishing the following relating to the variance request:

- That granting the variance to the landscape 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 CD No 2 (Tract 3) 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 CD No 2 (Tract 3) zoning classification.

Additionally, the applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the prohibited fence and to location on Gaston Avenue will not adversely affect neighboring property.



If the board were to grant the variance and special exceptions to allow the fence in the front yard and impose the submitted site plan/elevation as a condition, the fence(s) in the front yard setback would be limited to what is shown on this document– which in this case is a three-foot to nine-foot-high solid wood and brick fence, an eight-and-one-half-foot brick retaining wall, and an eight-and-a-half-foot brick fence with a 10-foot six-inch pedestrian gate, located in portions of the front yard and along the front lot line on Gaston Avenue.

As of August 7, 2020, six letters in opposition and four letters in support to the requests have been received by staff.

**Timeline:**

March 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.

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 5<sup>th</sup> 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 applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment A).

June 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August

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 8, 2020: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment B).

June 12, 2020: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment C).

June 23, 2020: The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action on this application request until the next public hearing to be held on August 18, 2020 to give the applicant the opportunity to provide support for this request.

June 25, 2020: The Board Administrator wrote the applicant a letter of the board's action; the July 28 deadline to submit additional evidence for staff to factor into their analysis; and the August 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

July 30, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board, and Mike Martin and Jason Pool Building Inspectors.

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

July 31, 2020: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment D).

**BOARD OF ADJUSTMENT ACTION: August 18, 2020**

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

APPEARING IN OPPOSITION: None

**MOTION#1: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 190-061, on application of J. Anthony Sisk, represented by Jeff Baron, **grant** the variance to the landscape regulations to allow a fence in the front yard as requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted revised site plan/elevation is required in particular the plans marked July 7, 2020.

**SECONDED: Halcomb**

AYES: 5 –Halcomb, Narey, Gambow, Adams, Lamb

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

**MOTION#2: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 190-061, on application of J. Anthony Sisk, represented by Jeff Baron, **grant** the request of this applicant to construct and/or maintain a nine-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 revised site plan/elevation is required with the site plan dated July 7, 2020.

**SECONDED: Halcomb**

AYES: 5 – Halcomb, Narey, Gambow, Adams, Lamb

NAYS: 0

I move that the Board of Adjustment, in Appeal No. BDA 190-061, on application of J. Anthony Sisk, represented by Jeff Baron, **deny** the special exception 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 requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

**SECONDED:** Halcomb

**AYES:** 5 –Halcomb, Narey, Gambow, Adams, Lamb

**NAYS:** 0 -

**MOTION FAILED:** 5-0 (unanimously)

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2:11 P.M. Recess

2:16 P.M. Resumed

2:59 P.M. Board Meeting adjourned for **August 18, 2020.**

*Cheryl Gumber*  
\_\_\_\_\_  
CHAIRPERSON

*Jennifer Munoz*  
\_\_\_\_\_  
BOARD ADMINISTRATOR

*Latonia Jackson*  
\_\_\_\_\_  
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.