

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, SEPTEMBER 23, 2020**

MEMBERS PRESENT AT BRIEFING: Michael Schwartz, Chair, Catrina Johnson, regular member Matthew Vermillion regular member, Matt Shouse, regular member

MEMBERS ABSENT FROM BRIEFING: Damian Williams, regular member

MEMBERS PRESENT AT HEARING: Michael Schwartz, Chair, Catrina Johnson, regular member Matthew Vermillion regular member, Matt Shouse, regular member

MEMBERS ABSENT FROM HEARING: Damian Williams, regular member

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

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Attorney, Anna Holmes, Asst. City Atty., Charles Trammell, Development Code Specialist, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, David Nevarez, Engineering, Neva Dean, Assistant Director, Kris Sweckard, Director.

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 23, 2020 docket.**

BOARD OF ADJUSTMENT ACTION: September 23, 2020

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.

MISCELLANEOUS ITEM NO. 1

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

BOARD OF ADJUSTMENT ACTION: September 23, 2020

MOTION: Johnson

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

SECONDED: Vermillion

AYES: 4 – Schwartz, Vermillion, Johnson, Shouse

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 190-083(OA)

BUILDING OFFICIAL’S REPORT: Application of Betty Dixon for a special exception to the fence height regulations at 7706 Midbury Drive. This property is more fully described as Lot 4, Block 1/7278 and is zoned an R-16(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct a five-foot one-inch-high fence in a required front yard, which will require a one-foot one-inch special exception to the fence regulations.

LOCATION: 7706 Midbury Drive

APPLICANT: Betty Dixon

REQUESTS:

A request for a special exception to the fence standards regulations related to the fence height of one-foot one-inch is made to construct and maintain a five-foot one-inch-high solid cinderblock fence with a five-foot metal pedestrian 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-16 (A) (Single family district)
- North: R-16 (A) (A) (Single family district)
- East: R-16 (A) (A) (Single family district)
- South: R-16 (A) (A) (Single family district)
- West: R-16 (A) (A) (Single family district)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The purpose of this request for a special exception to the fence height standards is to construct and maintain a four-foot six-inch-high solid cinderblock fence with a five-foot metal pedestrian 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-16(A) Single Family District and this property has a platted building line of 40-foot front yard setback.

The proposed fence is to be located in this required front yard. The following additional information was gleaned from the submitted site plan:

- The proposed fence is approximately 76 feet-in-length parallel to Midbury Drive and runs approximately 10-to-40 feet perpendicular to Midbury Drive as the fence approaches the east side from the west side of the property.
- The distance between the proposed fence and the pavement line is between 22 and 39 feet.

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

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 September 11, 2020, no letters have been received in opposition or support to this request.

The applicant has the burden of proof in establishing that the special exception to the fence height regulation of three feet will not adversely affect neighboring property.

Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding one foot one inch-in-height in the front yard setback to be constructed in the location and heights as shown on these documents.

Timeline:

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

August 18, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

August 19, 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 September 2, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the September 11, 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.”

August 27, 2020: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

September 4, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearing. The 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 Sing Specialist, 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.

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

BOARD OF ADJUSTMENT ACTION: September 23, 2020

APPEARING IN FAVOR: Betty Dixon 2011 E. Kirkwood Blvd. #110 Southlake, TX

APPEARING IN OPPOSITION: George Palmer 7715 Midbury Dr., Dallas, TX.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 190-083, on application of Betty Dixon, for a special exception to fence height regulations contained in the Dallas Development Code, is **granted**, subject to the following condition:

Compliance with the submitted site plan and elevation is required.

SECONDED: Shouse

AYES: 4 - Schwartz, Shouse, Vermillion, Johnson

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-085(OA)

BUILDING OFFICIAL’S REPORT: Application of Jason Metcalf for a special exception to the fence height regulations at 9032 Clearhurst Drive. This property is more fully described as Lot 24, Block C/8123, and is zoned Tract 2 within Planned Development District No. 343, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct an 11-foot three-inch-high fence in a required front yard, which will require a seven-foot three-inch special exception to the fence regulations.

LOCATION: 9032 Clearhurst Drive

APPLICANT: Jason Metcalf

REQUESTS:

A request for a special exception to the fence standards regulations related to fence height of up to seven feet three-inches is made to construct and maintain a solid wood with brick base fence that ranges in overall height from eight feet to 11-feet three-inches located in one of the two required front yards (White Pine Lane) 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: PD No. 343 Tract 2 (Planned Development District)

North: PD No. 343 Tract 2 (Planned Development District)

East: PD No. 343 Tract 2 (Planned Development District)

South: PD No. 343 Tract 2 (Planned Development District)

West: PD No. 343 Tract 2 (Planned Development District)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The purpose of this request for a special exception to the fence height standards is to construct and maintain a solid wood with brick base fence that ranges in overall height from eight feet to 11-feet three-inches located in one of the two required front yards (White Pine Lane) 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 Tract 2 within PD No. 343. The minimum front yard setback is 15 feet. For purposes of Tract 2, front yard means that portion of a lot which abuts a street and extends across the width of the lot between the back of the curb and the setback line.

According to Section 51A-4.602.(7) fence heights shall be measured from:

(i) the top of the fence to the level of the ground on the inside and outside of any fence within the required front yard. The fence height shall be the greater of these two measurements. If the fence is constructed on fill material that alters grade, as determined by the building official, the height of the artificially altered grade shall be included in the height of the fence. For purposes of this provision, artificially altered grade means the placement of fill material on property that exceeds a slope of one foot of height for three feet of distance; and

(ii) the top of the fence to the level of the ground on the inside of the fence in the required side or rear yard.

(B) In all other zoning districts, fence heights shall be measured from the top of the fence to the level of the ground on the inside of the fence.

While the portion of the fence material is less than 11-feet-in-height, since the base includes a berm with a brick face, that measurement is included in the overall height of the fence.

The proposed fence is to be located in this required front yard. The following additional information was gleaned from the submitted site plan:

- The proposed fence is approximately 36 feet-in-length parallel to White Pine Lane and runs approximately three feet perpendicular to White Pine Lane in the north side of the property as the fence approaches the 15-foot required setback.
- The distance between the proposed fence and the pavement line is between 12 and 15 feet.

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

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 September 11, 2020, no letters have been received in opposition or support to this request.

The applicant has the burden of proof in establishing that the special exception to the fence height regulation of three feet will not adversely affect neighboring property.

Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding seven-foot three-inch in the front yard setback to be constructed in the location and heights as shown on these documents.

Timeline:

- July 28, 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.
- August 18, 2020: The Board of Adjustment Secretary assigned this case to the Board of Adjustment Panel B.
- August 19, 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 September 2, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the September 11, 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.”
- September 1, 2020: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- September 4, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearing. The 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 Sing Specialist, 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.

BOARD OF ADJUSTMENT ACTION: September 23, 2020

APPEARING IN FAVOR: Jason Metcalf 9032 Clearhurst Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: **Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 190-085, on application of Jason Metcalf, for a special exception to fence height regulations contained in the Dallas Development Code, is **granted**, subject to the following condition:

Compliance with the submitted site plan and elevation is required.

SECONDED: Shouse

AYES: 4 - Schwartz, Shouse, Johnson, Vermillion

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-078(OA)

BUILDING OFFICIAL'S REPORT: Application of Thomas Tsang a variance to the front yard setback regulations at 5330 Belmont Ave. This property is more fully described as Part of Lot 7, Block 3/1975, and is zoned an R-7.5(A) Single Family District, which requires a front yard setback of 25 feet. The applicant proposes to construct a single family residential structure and provide a six-foot front yard setback along Belmont, which will require a 19-foot variance to the front yard setback regulations along Belmont, and provide a zero-foot front yard along Glencoe, which will require a 25-foot variance to the front yard regulations along Glencoe.

LOCATION: 5330 Belmont Avenue

APPLICANT: Thomas Tsang

REQUESTS:

The following requests have been made on a site that is being developed with a a two-story, approximately 4,262-square-foot, single-family structure with a 533 square-foot deck :

1. A variance to the front yard regulations of 19 feet is made to allow the structure to be located six feet from the site's Belmont Avenue front property line; and,
2. A variance to the front yard regulations of 25 feet is made to allow the structure to be located at the property line for the site's Glencoe Street front property line.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (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 (Height, Front Yard, and Side Yard Variances):

Denial

Rationale:

- Staff concluded that the applicant had not substantiated how the variances are necessary to permit development of the subject site or whether the property 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 R-7.5(A) zoning designation.
- Staff concluded from the information submitted by the applicant at the time of the September 4th staff review team meeting that while staff recognized that the site is irregular in shape, requires two front yards, and the site has a restrictive area due to the portion of the lot being 5,338 square feet in area; however, the applicant had not substantiated how the variance is necessary to permit development of the subject site that differs from other parcels of land that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-7.5 zoning district or that the applicant had not substantiated how the variances are not contrary to the public interest and how granting this request would not be to relieve a self-created or personal hardship, nor for financial reasons only.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district)
North: R-7.5(A) (Single family district)
South: R-7.5(A) (Single family district)
East: R-7.5(A) (Single family district)
West: R-7.5(A) (Single family district)

Land Use:

The site is a portion of Lot 7, Block 3/1975. This portion of the lot is undeveloped. However, the remainder of the lot has an existing single family home. The areas to the north, south, east, and west are developed with single family structures/use.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

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

The requests for a variance to the front yard setback regulations focus on constructing and maintaining a two-story, approximately 4,262-square-foot, single family structure with a 533 square-foot deck proposed to be located six feet from the property line or 19 feet from Belmont Avenue front property line and at the property line or 0 feet from the Glencoe Street's front property line.

The submitted site plan indicates the proposed structure is to be located six feet from the Belmont Avenue's front property line or 19 feet into this 25-foot front yard setback, and zero feet from the Glencoe Street's front property line or 25 feet into this 25-foot front yard.

According to DCAD records, there are "no main improvement" and "no additional improvements" for the portion of Lot 7, Block 3/1975 addressed at 5330 Belmont Avenue.

The subject site is flat, irregular in shape, and according to the application, it is 0.123 acres (or approximately 5,338 square feet) in area. In an R-7.5(A) District, the minimum lot size is 7,500 square feet.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

If the board were to grant the variance request and impose the submitted site plan as a condition, the single-family structure in the front yard setback would be limited to what is shown on this document– which in this case is a single family structure with a 533 square foot deck that would be located six feet from the Belmont Avenue's front property line or 19 feet into this 25-foot front yard setback and zero feet from Glencoe Street's front property line or 25 feet into this 25-foot property line.

Timeline:

- July 10, 2020: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.
- August 18, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- August 19, 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 September 2, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the September 11, 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."
- September 4, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearing. The 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 Sing Specialist, 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.
- September 8, 2020: Mr. Brown (not authorized to represent the applicant/owner per application) submitted a comparable table to the board (see Attachment A).
- September 10, 2020: Mr. Brown (not authorized to represent the applicant/owner per application) submitted a comparable table to the board (see Attachment B).

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

BOARD OF ADJUSTMENT ACTION: September 23, 2020

APPEARING IN FAVOR: Lacey Brutschy, 3941 Legacy Dr. #204 Plano, TX.
Guy Brown, 10147 Timber Trail Dr. Dallas, TX.

APPEARING IN OPPOSITION: None

MOTION#1: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 190-078, on application of Thomas Tsang, **grant** the 19-foot variance to the front yard setback regulations along Belmont Avenue 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 site plan is required.

SECONDED: Shouse

AYES: 4 - Schwartz, Shouse, Vermillion, Johnson

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION#2: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 190-078, on application of Thomas Tsang, **grant** the 25-foot variance to the front yard setback regulations along Glencoe Street 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 site plan is required.

SECONDED: Shouse

AYES: 4 - Schwartz, Shouse, Vermillion, Johnson

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-082(OA)

BUILDING OFFICIAL’S REPORT: Application of Eric Messer for a special exception to the visibility obstruction regulations at 5707 Williamstown Road. This property is more fully described as Lot 1, Block B/6991, and is zoned an R-16(A) Single Family District, which requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct a single-family residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation.

LOCATION: 5707 Williamstown Road

APPLICANT: Eric Messer

REQUESTS:

A request for special exceptions to the visual obstruction regulations is made to locate and maintain portions of an eight-foot-high solid wood fence and solid motorized wood gates in the two 20-foot visibility triangles at the intersection of the street and driveway approaches into the property from Nuestra Drive on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (visual obstruction regulations):

Denial.

Rationale:

- The Sustainable Development Department Senior Engineer has objections to the requests. The Senior Engineer finds that the fence compromises visibility of pedestrians, bicyclists, and motorists without enough sight distance to see vehicles exiting (and potentially backing out) of the subject driveway onto a thoroughfare corridor if the aforementioned conditions are imposed as part of the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should not be granted because the items to be located and maintained in the visibility triangles do constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (Single Family District)
North: R-16(A) (Single Family District)
South: R-16(A) (Single Family District)
East: R-16(A) (Single Family District)
West: R-16(A) (Single Family District)

Land Use:

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

Zoning/BDA History:

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

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

The requests for special exceptions to the visual obstruction regulations on a site developed with a single family home focus on locating and maintaining a portion of an eight-foot-high solid wood fence and solid motorized wood gates in the two 20-foot visibility triangles at the intersection of the street and driveway approaches into the property from Nuestra Drive on a site developed with a single family home.

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

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
- between two-and-a-half and eight feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The property is located in an R-16(A) Single Family District which requires the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.

A site plan and elevation have been submitted indicating portions of eight-foot-high solid wood fence and solid motorized wood gates in the two 20-foot visibility triangles at the intersection of the street and driveway approaches into the site from Nuestra Drive.

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

The applicant has the burden of proof in establishing how granting these request to maintain portions of an eight-foot-high solid wood fence and solid motorized wood gates in the two 20-foot visibility triangles at the intersection of the street and driveway approaches into the property from Nuestra Drive does not constitute a traffic hazard.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items to be located and maintained in the two 20-foot visibility triangles at the drive approaches into the site from Nuestra Drive, to that what is shown on these documents – portion of an eight-foot-high solid wood fence and a solid motorized wood gate.

Timeline:

- July 27, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- August 18, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- August 19, 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 September 2, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the September 11, 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.”
- September 4, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearing. The 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 Sing Specialist, 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.
- September 8, 2020: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked “Recommends Approval”.
- September 10, 2020: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: September 23, 2020

APPEARING IN FAVOR: Eric Messer 6312 Widgeon Dr. Plano, TX

APPEARING IN OPPOSITION:

MOTION: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 190-082, on application of Eric Messer, **deny** the special exception requested by this applicant to construct and/or maintain items in the visibility triangle at the driveway approach **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Vermillion

AYES: 4 - Schwartz, Shouse, Vermillion, Johnson

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

The meeting was adjourned at 1:41 P.M. on September 23, 2020.



CHAIRPERSON



BOARD ADMINISTRATOR



BOARD SECRETARY

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