

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
Monday, October 21, 2019**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, chair, Judy Pollock, regular member, Robert Agnich, regular member, Matt Shouse, regular member and Roger Sashington, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, chair, Judy Pollock, regular member, Robert Agnich, regular member, Matt Shouse, regular member and Roger Sashington, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, David Nevarez, Sr. Traffic Engineer, Elaine Hill, Board Secretary and Neva Dean, Asst. Director

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, David Nevarez, Sr. Traffic Engineer, Elaine Hill, Board Secretary and Neva Dean, Asst. Director

11:16 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's October 21, 2019 docket.

1:18 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

Panel C, September 16, 2019 public hearing minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

Approval of the Board of Adjustment Public Hearing Calendar was approved without a formal vote.

MISCELLANEOUS ITEM NO. 3

BOARD OF ADJUSTMENT ACTION: October 21, 2019

Motion: Richardson

I move to deny the request to reimburse the filing fee submitted in conjunction with BDA189-115, for property located at 429 N. Denley Drive because it would not result in a substantial financial hardship to the applicant.

SECOND: Agnich

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Sashington

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-113(SL)

BUILDING OFFICIAL’S REPORT: Application of Phillip Snoddy, represented by Miguel A. Ramirez, for a variance to the front yard setback regulations at 4422 Swiss Avenue. This property is more fully described as Lot 5A, block 8/768, and is zoned PD 298 (Subarea 9), MF-2(A), H/72, which requires a front yard setback of 24 feet 4 inches. The applicant proposes to construct and/or maintain a structure and provide a 0-foot front yard setback, which will require 24 feet 4-inch variance to the front yard setback regulations.

LOCATION: 4422 Swiss Avenue

APPLICANT: Phillip E. Snoddy
Represented by Miguel A. Ramirez

REQUEST:

A request for a variance to the front yard setback regulations of 24’ 4” is made to construct and maintain 4-unit townhome development part of which would be located on one of the site’s two front property lines (N. Carroll Avenue) or 24’ 4” into this 24’ 4” front yard setback on a site that is undeveloped.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff has concluded that this request should be granted in that is the same request made and granted by Board of Adjustment Panel C in May of 2016 where the applicant must return with a new application because permits were not filed within 180 days from May of 2016.
- Staff has concluded that the front yard setback requirements impose an unnecessary hardship given that while that the Dallas Development Code requires that a building be erected a certain number of feet away from a street, alley or lot line, the front yard setback requirement for this site is not set forth in terms of distance from a street, alley or lot line but from the closest main building in the same blockface. As a result, staff concluded that a literal enforcement of the front yard setback requirements would unreasonably restrict any development on the property.
- Staff concluded that the front yard setback requirements set forth in the Peak Suburban Addition Ordinance (H/72) results in an unreasonably restrictive area to develop with the requirement being for a corner lot to have a setback within one foot of the closest main building on the same blockface.
- Staff concluded that the applicant's request appears to be commensurate with other parcels in the same PD 298 (Subarea 9), MF-2(A), H/72 zoning district where it appears that other lots do not meet this requirement, and where it appears that other parcels of land along N. Carroll Avenue in the PD 298 have little to no front yard setback.
- Staff concluded that granting this request would not contrary to public interest in that:

1. the Swiss Avenue front yard setback is being provided and the only variance is to the N. Carroll Avenue front yard setback requirements where other developments near the site along this street have little or no front yard setback; and
2. the Sustainable Development Department Historic Preservation Planner has no objections to the request for this property located in the Peak's Suburban Historic District in that the submitted plans with this application match the plans approved by the Landmark Commission in February of 2017.

BACKGROUND INFORMATION:

Zoning:

Site: PD 298 (Subarea 9), MF-2(A), H/72 (Planned Development, Historic)
North: PD 298 (Subarea 9, R-7.5 & P), H/72 (Planned Development, Historic)
South: PD 298 (Subarea 9, MF-2), H/72 (Planned Development, Historic)
East: PD 298 (Subarea 13), H/72 (Planned Development, Historic)
West: PD 298 (Subarea 9, MF-1), H/72 (Planned Development, Historic)

Land Use:

The subject site is in undeveloped. The areas to the north and west are developed with multifamily uses; the area to the east is undeveloped; and the area to the south is developed with an office use.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA156-027, Property at 1015 N. Carroll Avenue (the subject site) | <p>On May 16, 2016, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 24' 4" and imposed the submitted revised site plan as a condition and denied a request for variance to height regulations without prejudice.</p> <p>The case report stated the requests were made to construct and maintain a two, two-unit multifamily development to be located on the N. Carroll Avenue front property line or 24' 4" into this 24' 4" front yard setback.</p> |
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GENERAL FACTS/STAFF ANALYSIS:

- The request for variance to the front yard setback regulations of 24' 4" focuses on constructing and maintaining a 4-unit townhome development that would be located in the one of the site's two front yard setbacks N. Carroll Avenue that would be located on this front property line or 24' 4" into the 24' 4" into this front yard setback.
- The site is zoned PD 298 (Subarea 9), MF-2(A), H/72. The site is located at the south corner of Swiss Avenue and N. Carroll Avenue.

- The site is governed by regulations set forth in PD 298 (Subarea 9) where in this case the front yard setback on the site is required to provide a 15' front yard setback. The site being zoned H/72 is also governed by regulations set forth in the Peak Suburban Addition Ordinance which addresses design standards and regulations front yard setbacks which in this case states: "a main building on a corner lot must have a front yard setback that is within one foot of that of the closest main building on the same block face".
- A site plan has been submitted that represents a footprint of two, 2-unit townhome development where a 40' front yard setback is provided on Swiss Avenue (where the front yard setback on this street is 40 feet) and where a 0' front yard setback is provided on N. Carroll Avenue (where the front yard setback is 24' 4" on this street).
- On May 16, 2016, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 24' 4" and imposed the submitted revised site plan as a condition and denied a request for variance to height regulations without prejudice (BDA156-027). The case report stated the requests were made to construct and maintain a two, two-unit multifamily development to be located on the N. Carroll Avenue front property line or 24' 4" into this 24' 4" front yard setback.
- The applicant's representative on this application has submitted a document (Attachment A) that states the following: "I wanted to bring to your attention that this BDA, 189-113, with the address of 4422 Swiss Avenue, was previously listed as 1015 N Carrol Street, with the BDA of 156-027(SL). As you can see in the attached PDF, the previous case expired. The floor plan footprint is the same. The only change is the owner".
- The Dallas Development Code states with regard to "Board action, board of adjustment hearing procedures": the applicant shall file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again."
- The case report for the application filed on this site in 2016 stated that the Building Official had provided the following information that is relevant to this application:
 - The site is zoned PD 298 (Subarea 9, MF-2 and CR), H/72. PD 298, Subarea 9 conditions state the following: Subarea 9 is subject to regulations governing the R-7.5(A), TH-2(A), MF-2(A), MU-1, MU-1-D, and CR districts of Chapter 51(A). The zoning district category applicable to each tract in Subarea 9 is shown on Exhibit 298B. The MF-2(A) required front yard setback is 15' and the CR required front yard setback is 15'.
 - The zoning of the adjoining property on the N. Carroll Street frontage is PD 298 (Subarea 13) H/72 (Tract 1).
 - The appeal application references a required 30' front yard setback ("...set forth in the Peak's Suburban Ordinance #22352...") and requests an 18' variance to allow a 12' setback.
 - The following Historic Overlay 72 (H/72) requirement appears to be the basis for the required 30' front yard setback.

- The case report for the application filed on this site in 2016 stated that the Building Official had provided the following additional information relevant to this application: This property is required to provide a front yard setback of 24' 4" where the applicant proposes to provide a 0 foot front yard setback which will require a 24' 4" variance to the front yard setback regulations.
- As was in the application filed on this site in 2016, the applicant has submitted a site plan indicating that the proposed structure is located 40' from the Swiss Avenue front property line (represented by the applicant to be in compliance with this front yard setback), and located on the N. Carroll Avenue front property line (or represented by the applicant and in the Building Official's report as being 24' 4" into this 24' 4" front yard setback).
- The Sustainable Development Department Senior Historic Preservation Planner has submitted a review comment sheet marked "Has no objections" commenting "4422 Swiss Avenue is located in the Peak's Suburban Addition Historic District (H-72). On February 6, 2017, the Landmark Commission reviewed and approved an application for new construction of four semi-detached residences on the property. This application has the support of both the neighborhood Task Force and Preservation Staff. The submitted plan matches the plans approved by the Landmark Commission. Preservation Staff has no objections to this application".
- According to DCAD records, there are "no improvements" for property at 1015 N. Carroll Avenue which is the subject site also addressed at 4422 Swiss Avenue.
- The subject site is flat, rectangular in shape, and according to the application is 1.019 acres in area.
- The site has two front yard setbacks given that it fronts two streets as any corner property would that is not zoned a single family, duplex, or agricultural district.
- The applicant has the burden of proof in establishing the following:
 1. That granting the variance to the front yard setback is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
 2. The variance would be 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 PD 298 (Subarea 9), MF-2(A), H/72 classification.
 3. The variance is not 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 PD 298 (Subarea 9), MF-2(A), H/72 classification.
- If the Board were to grant this request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document – which in this case a structure located on the N. Carroll Avenue the front property line or 24' 4" into this 24' 4" front yard setback.

Timeline:

- July 29, 2019: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- September 9, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case".
- September 10, 2019: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant's representative 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11th 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 10, 2019: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A). The document/email states: "I wanted to bring to your attention that this BDA, 189-113, with the address of 4422 Swiss Avenue, was previously listed as 1015 N Carrol Street, with the BDA of 156-027(SL). As you can see in the attached PDF, the previous case expired. The floor plan footprint are the same. The only change is the owner".
- September 26, 2019: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator (see Attachment B).
- October 8, 2019: The Board of Adjustment staff review team meeting was held October 8, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Sustainable Development and Construction Department Conservation District Chief Planner, the

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

October 10, 2019: The Sustainable Development Department Senior Historic Preservation Planner has submitted a review comment sheet marked “Has no objections” commenting “4422 Swiss Avenue is located in the Peak’s Suburban Addition Historic District (H-72). On February 6, 2017, the Landmark Commission reviewed and approved an application for new construction of four semi-detached residences on the property. This application has the support of both the neighborhood Task Force and Preservation Staff. The submitted plan matches the plans approved by the Landmark Commission. Preservation Staff has no objections to this application”.

BOARD OF ADJUSTMENT ACTION: October 21, 2019

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 189-113, application of Phillip Snoddy, represented by Miguel Ramirez, **granted** a variance for front yard setback regulations requested by this applicant because our evaluation of the property and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code.

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.

SECOND: Agnich

AYES: 5 – Shouse, Agnich, Pollock, Sashington, Richardson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-114(SL)

BUILDING OFFICIAL'S REPORT: Application of Tammy Lynn Clary, represented by Bella Vista Company, for a special exception to the visual obstruction regulations at 5847 Marquita Avenue. This property is more fully described as Lot 12, Block 8/2153, and is zoned CD 11, which requires a 20-foot visibility triangle at driveway and alley approaches. The applicant proposes to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 5847 Marquita Avenue

APPLICANT: Tammy Lynn Clary
Represented by Bella Vista Company

REQUEST:

A request for a special exception to the visual obstruction regulations is made to maintain an 8' high solid wood fence in the 20' visibility triangle at where the alley meets Delmar Avenue on a site that is developed with a single-family home use/structure.

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:

Approval, subject to the following condition:

- Compliance with the submitted site plan/elevation is required.

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the request.
- Staff concluded that the request for a special exception to the visual obstruction regulations should be granted (with the suggested condition imposed) because the item to be maintained in the visibility triangle at where the alley meets Delmar Avenue does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: CD 11 (Conservation District)
North: CD 11 (Conservation District)

South: CD 11 (Conservation District)
East: R-7.5(A) (Single family district 7,500 square feet)
West: CD 11 (Conservation District)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The request for a special exception to the visual obstruction regulations focuses on maintaining an 8' high solid wood fence in the 20' visibility triangle at where the alley meets Delmar Avenue on a site that is developed with a single-family home use/structure.
- Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The property is located in CD 11 zoning district which requires the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.
- A site plan/and elevation have been submitted indicating portions of an 8' high solid wood fence located in the 20' visibility triangle at where the alley meets Delmar Avenue.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing how granting this request to maintain portions of an 8' high solid wood fence located in the 20' visibility triangle at where the alley meets Blair Boulevard does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan/elevation would limit the item in the two 20' visibility triangle at where the alley meets Blair Boulevard to that what is shown on this document - an 8' high solid wood fence.

Timeline:

July 30, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 9, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 10, 2019: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11th 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 27, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 8, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Sustainable Development and Construction Department Conservation District Chief Planner, the Sustainable Development and Construction Senior Engineer, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

October 10, 2019: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.

BOARD OF ADJUSTMENT ACTION: October 21, 2019

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 189-114, application of Tammy Lynn Clary, represented by Bella Vista Company, **grant** the special exception to the visual obstruction regulations requested by this applicant because our evaluation of the property and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code.

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

- Compliance with the submitted site plan/elevation is required.

SECOND: Agnich

AYES: 5 – Shouse, Agnich, Pollock, Sashington, Richardson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-111(SL)

BUILDING OFFICIAL’S REPORT: Application of Ma. Dora Elia Lara Gonzalez, represented by Santos T. Martinez of La Sierra Planning Group, for a variance to the front yard setback regulations at 2111 Kathleen Avenue. This property is more fully described as Lot 23, Block C/5854, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and/or maintain a structure and provide a 11-foot 4-inch front yard setback, which will require a 13 foot 8 inch variance to the front yard setback regulations.

LOCATION: 2111 Kathleen Avenue

APPLICANT: Ma. Dora Elia Lara Gonzalez
Represented by Santos T. Martinez of La Sierra Planning Group

REQUEST:

A request for a variance to the front yard setback regulations of 13’ 8” is made to maintain a porch structure attached to a single-family home structure located 11’ 4” from the site’s front property line or 13’ 8” into the 25’ front yard setback.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that this request should be granted because the subject site is unique and different from most lots in the R-7.5(A) zoning district in that it is restrictive in area. The approximately 7,200 square foot subject site is approximately 300 square feet less than lot size typically found in the R-7.5(A) zoning district at 7,500 square feet.
- Staff concluded that granting this variance would not be contrary to public interest in that if the board were to grant this request and impose the submitted site plan as a condition, the front yard encroachment would be limited to that what is shown on this document – an approximately 300 square foot porch structure attached to an approximately 1,200 square foot single family home.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

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 variance to the front yard setback regulations of 13' 4" focuses on maintaining an approximately 300 square foot porch structure attached to an approximately 1,200 square foot one-story single-family home structure located 11' 4" from the site's property line or 13' 8" into the 25' front yard setback.
- The property is located in an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.
- The submitted site plan represents a porch structure located 11' 4" from the front property line or 13' 8" into the 25' front yard setback.
- According to DCAD records the "main improvement" listed for property addressed at 2111 Kathleen Avenue is a structure built in 1945 with 1,128 square feet of living area and 1,878 square feet of total area, and with the following "additional improvements": a 120 square foot storage building and a 750 square foot room addition.
- The subject site is flat, rectangular in shape (120' x 60') and is 7,200 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The site plan represents that most of the porch structure is in the 25' front yard setback, and that none of the single-family home structure encroaches into this setback.
- 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 structure in the front yard setback would be limited to what is shown on this document which in this case is a porch structure located 11' 4" from the site's front property line or 13' 8" into the 25' front yard setback.
- Granting this request for variance to the front yard setback regulations will not provide any relief to any existing noncompliance on the site related to visual obstruction regulations.

Timeline:

July 26, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 9, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 10, 2019: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11th 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.”

October 8, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Sustainable Development and Construction Department Conservation District Chief Planner, the Sustainable Development and Construction Senior Engineer, the Building Inspection Senior Plans Examiner/Development Code Specialist, the 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.

October 11, 2019: The applicant’s representative submitted additional documentation to staff (see Attachment A). Note that this information was not factored into the staff recommendation since it was submitted after the October 8th staff review team meeting.

BOARD OF ADJUSTMENT ACTION: October 21, 2019

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

APPEARING IN OPPOSITION: No One

MOTION: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 189-111, on application of Ma. Dora Elia Lara Gonzalez, represented by Santos Martinez of La Sierra Planning Group, **grant** the 13-foot 8-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

- Compliance with the submitted site plan is required.

SECOND: Sashington

AYES: 4 – Shouse, Agnich, Pollock, Sashington

NAYS: 4 – Richardson

MOTION PASSED: 4 – 1

FILE NUMBER: BDA189-115(SL)

BUILDING OFFICIAL’S REPORT: Application of Texas Heavenly Homes LTD, represented by Rob Baldwin of Baldwin Associates, for a variance to the lot coverage regulations, and for special exceptions to the front and side yard setback regulations at 429 N. Denley Drive. This property is more fully described as Part of Lot 12, Block 49/3030, and is zoned PD 571 (Subdistrict 2), which allows a 45% maximum lot coverage, and requires a 20-foot 11 inch front yard setback and a 19 foot side yard setback. The applicant proposes to construct and/or maintain a structure with 1,685 square feet of floor area, which will require a 211 square foot variance to the lot coverage regulations given the maximum allowed lot coverage on the site is 1,474 square feet, and provide a 4 foot front yard setback, which will require a 16 foot 11 inch special exception to the front yard setback regulations, and provide a 2 foot 2 inch side yard setback, which will require a 16 foot 10 inch special exception to the side yard setback regulations.

LOCATION: 429 N. Denley Drive

APPLICANT: Texas Heavenly Homes LTD
Represented by Rob Baldwin of Baldwin Associates

REQUESTS:

The following requests have been made to construct and maintain a single-family home on a site that is currently undeveloped:

1. A request for a variance to the lot coverage regulations of 211 square feet (or 6 percent) is made to construct and maintain a single-family home structure with a proposed building pad of 1,685 square feet on the 3,276 square foot site when the 45 percent maximum lot coverage allowed on this site would limit the coverage of the building pad to 1,474 square foot floor area.
2. A special exception to the front yard setback regulations of 16' 11" is made to construct and maintain the aforementioned single-family home structure located 4' from the front property line or 16' 11" into the required 20' 11" front yard setback.
3. Special exceptions to the side yard setback regulations of up to 16' 10" are made to construct and maintain the aforementioned single-family home structure located as close as 2' 2" from a side property line or as much as 16' 10" into the required 19' side yard setback.

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:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE FRONT, SIDE, AND REAR SETBACK REQUIREMENTS:

Section 51(P)-571.109(c) of the Dallas Development Code specifies the board of adjustment may grant a special exception to the front, side, and rear yard setback requirements if the board finds, after a public hearing, that the special exception will not adversely affect the neighboring properties, the improvement is within the general building patterns of the neighborhood, and the special exception will preserve the character of the neighborhood. In granting a special exception to the setback requirements, the board may impose any other reasonable condition that would further the purpose and intent of the setback requirements of this article.

STAFF RECOMMENDATION (variance):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that this request should be granted because the subject site is unique and different from most lots in PD 571 (Subdistrict 2) zoning district by its restrictive area. The approximately 3,300 square foot subject site is approximately 1,700 square feet less than the 5,000 square foot minimum lot size provided in this PD.

STAFF RECOMMENDATION (special exceptions):

No staff recommendation is made on these or any request for a special exception to the front, side, and rear yard setback requirements if the board finds, after a public hearing, that the special exception will not adversely affect the neighboring properties, the improvement is within the general building patterns of the neighborhood, and the special exception will preserve the character of the neighborhood.

BACKGROUND INFORMATION:

Zoning:

Site: PD 571 (Subdistrict 2) (Planned Development)
North: PD 571 (Subdistrict 2) (Planned Development)
South: PD 571 (Subdistrict 2) (Planned Development)
East: PD 571 (Subdistrict 2) (Planned Development)
West: PD 571 (Subdistrict 2) (Planned Development)

Land Use:

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

Zoning/BDA History:

- | | |
|--|--|
| 1. Miscellaneous Item 3, BDA189-115, Property at 429 N. Denley Avenue (the subject site) | On October 21, 2019, the Board of Adjustment Panel C will consider a request to reimburse filing fees made in conjunction with this application. |
|--|--|

GENERAL FACTS /STAFF ANALYSIS (variance):

- The request for a variance to the lot coverage regulations of 211 square feet (or 6 percent) focuses on constructing and maintaining a single family home structure with a proposed building pad of 1,685 square feet on the 3,276 square foot site when the 45 percent maximum lot coverage allowed on this site would limit the coverage of the building pad to 1,474 square foot floor area on a site that is undeveloped.

- The property is zoned PD 571 (Subdistrict 2) where the maximum lot coverage is 45 percent for residential structures and 25 percent for nonresidential structures, and where the minimum lot size for single family structures is 5,000 square feet. (Note that this PD states that all existing single family lots shown in Exhibit 571C less than 5,000 square feet are considered to be conforming lots for the development of single-family structures. If these lots are replatted, however, they must meet the minimum lot area requirements which in this case, is 5,000 square feet).
- The applicant has submitted a site plan that represents a home with a footprint of 1,685 square feet. The applicant has submitted an application that represents the site is 3,276 square feet in area. (The footprint of the home covers 51 percent of the site).
- The subject site is flat, rectangular in shape (94.5' x 34.67'), and according to the submitted application, is 3,276 square feet in area.
- Prior to the creation of PD 571 in 2000, the subject site had been zoned RR (Regional Retail) and before the Zoning Transition of the City in 1989, HC (Heavy Commercial).
- According to DCAD records, there are "no main improvement" for property addressed at 429 N. Denley Drive.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the lot coverage 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 PD 571 (Subdistrict 2) 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 PD 571 (Subdistrict 2) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structure would be limited to what is shown on this document – which in this case is a structure that is represented to cover 51 percent of the subject site.

GENERAL FACTS/STAFF ANALYSIS (special exceptions):

- This requests for special exceptions to the front and side yard setback regulations of 16' 11" and 16' 10", respectively focuses on constructing and maintaining a two-story single family home structure located 4' from the front property line or 16' 11" into the required 20' 11" front yard setback, and as close as 2' 2" from a side property line or as much as 16' 10" into the required 19' side yard setback.
- The property is zoned PD 571 (Subdistrict 2) which states the following:

- Front yard setback. All main buildings must have a front yard setback that is within five percent of the average front yard setback of other main buildings in the same blockface. In the event the blockface consists of all vacant lots, the lot must be developed in accordance with the front yard setback regulations for an R-5(A) Single Family District.
- Side and rear yard setback. (1) Except as provided in Subsection (b)(2) below, rear and side yard setbacks must be within five percent of the average side or rear yard setback of other main buildings in the same blockface. In the event the blockface consists of all vacant lots, the lot must be developed in accordance with the side and rear yard setback regulations for a D(A) Duplex District. (2) There is no minimum side yard if the lot is 30 feet or less in width.
- A document has been submitted with the application representing that the front yard setback on the site is 20.9 feet and that the side yard setback is 5 feet. (Note that the Building Official's report states that the required side yard setback on this site is 19', and that the applicant's representative has represented agreement with the Building Official's finding).
- The submitted site plan represents a structure with a 1,685-building pad that is located 4' from the front property line, 2' 2" from the site's northern side property line, and 3' 6" from the site's southern side property line.
- The applicant has the burden of proof in establishing that the special exceptions will not adversely affect the neighboring properties, the improvement is within the general building patterns of the neighborhood, and the special exception will preserve the character of the neighborhood.
- If the Board were to approve these requests, and impose the submitted site plan as a condition, the structure in the front and side yard setbacks would be limited to what is shown on this document.

Timeline:

- August 1, 2019: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- September 9, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- September 10, 2019: 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11th 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;

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence; and
- with regard to the fee reimbursement request, please be advised that typically when an applicant makes a request for the board to consider reimbursing the filing fee, the applicant will submit documentation that shows how payment of the filing fee results in substantial financial hardship to them (i.e. additional financial documents as in but not limited to copies of 1040’s, W-4’s, bank statements - *all with account numbers redacted*)).

September 27, 2019: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official’s report to the Board of Adjustment Chief Planner/Board Administrator (see Attachment A).

October 8, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Sustainable Development and Construction Department Conservation District Chief Planner, the Sustainable Development and Construction Senior Engineer, the Building Inspection Senior Plans Examiner/Development Code Specialist, the 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.

BOARD OF ADJUSTMENT ACTION: October 21, 2019

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

APPEARING IN OPPOSITION: No One

MOTION 1 of 3: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 189-115, on application of Texas Heavenly Homes LTD, represented by Rob Baldwin of Baldwin Associates, **grant** the 211 square-foot variance to the maximum lot coverage regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

- Compliance with the submitted site plan is required.

SECOND: Shouse

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Sashington

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION 2 of 3: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 189-115, on application of Texas Heavenly Homes LTD, represented by Rob Baldwin of Baldwin Associates, **grant** the request of this applicant for a 16-foot 11-inch special exception to the front yard setback requirements, because our evaluation of the property and the testimony shows that this special exception will not adversely affect the neighboring properties, the improvement is within the general building patterns of the neighborhood, and the special exception will preserve the character of the neighborhood.

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

- Compliance with the submitted site plan is required.

SECOND: Shouse

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Sashington

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION 3 of 3: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 189-115, on application of Texas Heavenly Homes LTD, represented by Rob Baldwin of Baldwin Associates, **grant** the request of this applicant for a 16-foot 10-inch special exception to the side yard setback requirements, because our evaluation of the property and the testimony shows that this special exception will not adversely affect the neighboring properties, the improvement is within the general building patterns of the neighborhood, and the special exception will preserve the character of the neighborhood.

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

- Compliance with the submitted site plan is required.

SECOND: Shouse

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Sashington

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-116(SL)

BUILDING OFFICIAL'S REPORT: Application of Christopher Cole for a special exception to the single family use regulations at 6131 Waggoner Drive. This property is more fully described as Lot 11, Block 5493, and is zoned R-10(A), which limits the number of dwelling units to one. The applicant proposes to construct and/or maintain an accessory structure as an additional dwelling unit, which will require a special exception to the single family use regulations.

LOCATION: 6131 Waggoner Drive

APPLICANT: Christopher Cole

REQUEST:

A request for a special exception to the single family use regulations is made to complete and maintain an accessory structure as an additional “dwelling unit” on a site being developed with a single family home structure/dwelling unit.

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

Section 51(A)-4.209(6)(E)(1) of the Dallas Development Code specifies that the board may grant a special exception to the single family use regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)

North: R-10(A) (Single family district 10,000 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: R-10(A) (Single family district 10,000 square feet)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the single family use regulations focuses on completing and maintaining an accessory structure as an additional “dwelling unit” on a site being developed with a single family home structure/dwelling unit.
- The site is zoned R-10(A) where the Dallas Development Code permits one dwelling unit per lot.
- A site plan and floor plan has been submitted with this application that denotes the location of the structures on the site and the collection of rooms in these structures.
- The single family use regulations of the Dallas Development Code states that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- The Dallas Development Code defines “kitchen” as “any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities.”
- The Dallas Development Code defines “bathroom” as “any room used for personal hygiene and containing a shower or bathtub, or containing a toilet and sink.”
- The Dallas Development Code defines “bedroom” as “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sun rooms, and other similar rooms are considered bedrooms.”
- Floor plans of the accessory structure denotes a number of rooms/features that Building Inspection has determined makes it an additional dwelling unit - that is per Code definition: “one or more rooms to be a single housekeeping unit to

accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”

- This request centers on the function of what is proposed to be inside the “Proposed apt. floor” plan of the smaller structure on the site – the collection of rooms/features shown on the second story floor plan: a living room, a kitchen, bedroom, and bathroom. (The submitted floor plan of the smaller structure on the site labeled “Existing apt. floor” plan represents a collection of rooms/features that would *not* be considered a “dwelling unit”: a play room, a study, future bedroom, and bathroom).
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve this request, the Board may choose to impose a condition that the applicant comply with the site plan if they feel it is necessary to ensure that the special exception will not adversely affect neighboring properties. But granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.
- If the Board were to grant this request, the applicant could construct and maintain the accessory structure as a “dwelling unit” as represented on the submitted “Proposed apt. floor” plan. If the Board were to deny this request, the applicant could construct and maintain the accessory structure as represented on the submitted “Existing apt. floor” plan.

Timeline:

August 22, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 9, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 10, 2019: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11th 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.”

October 8, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Sustainable Development and Construction Department Conservation District Chief Planner, the Sustainable Development and Construction Senior Engineer, the Building Inspection Senior Plans Examiner/Development Code Specialist, the 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.

BOARD OF ADJUSTMENT ACTION: October 21, 2019

APPEARING IN FAVOR: Christopher Cole, 6131 Waggoner Drive, Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: Sashington

I move that the Board of Adjustment, in request No. BDA 189-116, on application of Christopher Cole, **grant** the request to construct and maintain an additional dwelling unit on a site developed with a single family structure and use as a special exception to the single family use regulations requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not be used as rental accommodations, and will not adversely affect neighboring properties.

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

- The applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

SECOND: Richardson

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Sashington

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-099(SL)

BUILDING OFFICIAL'S REPORT: Application of Dallas Cothrum of Masterplan for a special exception to the fence standards regulations at 4554 Harrys Lane. This property is more fully described as Lot 4, Block E/5534, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 6 foot 6-inch-high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence standards regulations.

LOCATION: 4554 Harrys Lane

APPLICANT: Dallas Cothrum of Masterplan

October 21, 2019 public hearing notes:

The applicant submitted a revised site plan/elevation to the Board at the public hearing.

ORIGINAL REQUEST (September 2019):

A request for a special exception to the fence standards regulations related to height of 2' 6" is made to construct and maintain an approximately 6' high fence (2' 4" high masonry base with 3' 8" high open wrought iron fence atop), approximately 6' high masonry columns, an approximately 6' 6" high vehicular entry gate, and an approximately 5' 5" high pedestrian gate to be located in the site's 40' front yard setback on a site being developed with a single family home.

REVISED REQUEST (October 2019):

A *revised* request for a special exception to the fence standards regulations related to height of 2' is made to construct and maintain a fence proposal exceeding 4' in height in the front yard setback on a site being developed with a single family home in what has been described in a document submitted by the applicant on October 2, 2019 (see Attachment A) as follows:

- "the proposed fence average height located in the setback is 5' 2"... the tallest portion of the proposed fence is 6' in height at the vehicle gate, thus requiring the need for a 2' special exception of the fence height regulations."

The applicant made reference in this attachment that "elevations and plans will to follow".

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single family district 1 acre)
North: R-1ac(A) (Single family district 1 acre)
South: R-1ac(A) (Single family district 1 acre)
East: R-1ac(A) (Single family district 1 acre)
West: R-1ac(A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

1. BDA078-117, Property at 4555 Harrys Lane (the lot to the north of the subject site)

On October 13, 2008, the Board of Adjustment Panel C granted requests for special exceptions to the fence and visual obstruction regulations, and imposed the following condition: Compliance with the submitted revised elevation/partial site plan document and revised full site plan is required.

The case report stated the requests were made to complete and maintain a 4' 6" high combination open wrought iron fence (with an approximately 2' high stone base) with approximately 5' high stone columns; two arched 6' 7" high open wrought iron vehicular gates with 7' 6" high stone columns (with 12" high light fixtures atop); and an 8' 6" high pedestrian gate flanked by 6' – 7' 8" high curved solid stone wing walls (each at approximately 10' in length) in the site's 40' front yard setback along Harrys Lane, and in the four 20' visibility triangles at the drive approaches into the site from Harrys Lane.

GENERAL FACTS/STAFF ANALYSIS:

- The original request for a special exception to the fence standards regulations related to height of 2' 6" focused on constructing and maintaining an approximately 6' high fence (2' 4" high masonry base with 3' 8" high open wrought iron fence atop), approximately 6' high masonry columns, and an approximately 6' 6" high vehicular entry gate, and an approximately 5' 5" high pedestrian gate to be located in the site's 40' front yard setback on a site being developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is zoned R-1ac(A) which requires a 40' front yard setback.
- The site is located at the southwest corner of Harrys Lane and Welch Road and has one front yard setback on Harrys Lane.
- The originally submitted site plan/elevation showed the proposed fence that would exceed 4' in height is an approximately 6' high fence (2' 4" high masonry base with 3' 8" high open wrought iron fence atop), approximately 6' high masonry columns, and an approximately 6' 6" high vehicular entry gate, and an approximately 5' 5" high pedestrian gate.
- The following additional information was gleaned from the originally submitted site plan/elevation:
 - The proposal is represented as being approximately 190' in length parallel to the street, and about 40' perpendicular to this street on the east and west sides of the site in this front yard setback.
 - The proposal is represented as being located approximately on the front property line, and approximately 13' from the pavement line.
- The Board of Adjustment Chief Planner/Board Administrator conducted a field visit of the site and surrounding area and noted two other fences that appeared to be above 4' in height located in front yard setback. One fence noted was located immediately north of the subject site - an approximately 4' 6" high combination open wrought iron fence with an approximately 2' high stone base that appears to be a result of a fence special exception granted by the Board in 2008 (see the "Zoning/BDA History" section of this case report for further details). The other fence noted was located immediately east of the subject site - an approximately 6' high open picket/rod fence with no recorded BDA history.
- As of October 11, 2019, one letter had been submitted in support of the request, and two letters had been submitted opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 6' 6" in height) will not adversely affect neighboring property.
- Typically, when the Board grants this type of request, they impose the applicant's submitted plans and elevations as conditions that would require the proposal exceeding 4' in height to be constructed and maintained in the location and of the heights and materials as shown on these documents. As of October 11, 2019, the only site plan/elevation submitted with this application is that what was submitted with the original application.

Timeline:

- July 2, 2019: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 12, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 12, 2019: 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 August 28th deadline to submit additional evidence for staff to factor into their analysis; and the September 6th 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 2, 2019: The Board of Adjustment Chief Planner/Board Administrator amended the application given emails he had received from the original applicant and the newly designated applicant.
- September 3, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September 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 Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.
- September 16, 2019: The Board of Adjustment Panel C conducted a public hearing on this application and delayed action on it per the applicant's request until October 21, 2019.
- October 2, 2019: The applicant submitted additional information beyond what was submitted with the original application and what had been submitted up to/at the September 2019 public hearing to staff (see Attachment A).

October 8, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Sustainable Development and Construction Department Conservation District Chief Planner, the Sustainable Development and Construction Senior Engineer, the Building Inspection Senior Plans Examiner/Development Code Specialist, the 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.

BOARD OF ADJUSTMENT ACTION: October 21, 2019

APPEARING IN FAVOR: Dallas Cothrum, 900 Jackson Street, Suite 640, Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: Richardson

I move that the Board of Adjustment, in Appeal No. BDA 189-099, on application of Dallas Cothrum of Masterplan, **grant** the request of this applicant to construct and/or maintain a six-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.

SECOND: Agnich

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Sashington

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

The meeting was adjourned at 3:06 p.m. on October 21, 2019.

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.