

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, November 12, 2018**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member Matt Shouse, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member Matt Shouse, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, David Naverez, Project Engineer, Elaine Hill, Board Secretary

STAFF PRESENT AT HEARING: Kris Sweckard, Director, Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, David Naverez, Project Engineer, Elaine Hill, Board Secretary

11:14 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's November 12, 2018 docket.

1:08 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, October 15, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: November 12, 2018

MOTION: None

The minutes were approved without a formal vote.

NOTE: The chair announced that BDA178-129, the application located at 1820 Browder Street, would not be heard at the hearing due to a posting error.

FILE NUMBER: BDA178-112(SL)

BUILDING OFFICIAL’S REPORT: Application of Luis Martinez for special exceptions for the handicapped to the single-family use regulations at 8301 Maddox Avenue. This property is more fully described as Lot 161, Block 6332, and is zoned R-7.5(A), which limits the number of dwelling units to one and requires that a single-family dwelling use in a single family, duplex, or townhouse district may be supplied by not more than one electrical utility service and metered by not more than one electrical meter. The applicant proposes to construct and/or maintain an additional dwelling unit, which will require a special exception for the handicapped to the single-family zoning use regulations, and to have more than one electrical utility service or one electrical meter, which will require a special exception for the handicapped to the single-family zoning use regulations.

LOCATION: 8301 Maddox Avenue

APPLICANT: Luis Martinez

November 12th public hearing note:

- The Building Inspection Senior Plans Examiner/Development Code Specialist stated at the public hearing that upon further review of the application, it had been determined that the special exception to allow an additional electrical utility service or electrical meter was no longer necessary on this property.

REQUESTS:

Requests for special exceptions for the handicapped to the single-family use regulations are made to maintain (according to the application) an existing garage conversion to a second/additional dwelling unit on a site developed with a dwelling unit single family home/use with (according to the application) “multiple electric meters”.

STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED: Section 51A-1.107. (b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family residential 7,500 square feet)
North: CR (Community Retail)
South: R-7.5(A) (Single family residential 7,500 square feet)
East: R-7.5(A) (Single family residential 7,500 square feet)
West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

The subject site is developed with two dwelling unit structures. The area to the north is developed with retail use, and the areas to the east, south, and west are developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The requests for special exceptions for the handicapped to the single-family use regulations focuses on maintaining an additional dwelling unit on a site developed with a dwelling unit single family home/use, with, according to the application, “multiple electric meters”.
- The property is zoned R-7.5(A) which allows a “single family” use.
- The “single family” use includes the following provisions that are related to this application:
 - 1) one dwelling unit located on a lot, and

- 2) a lot for a single-family use may be supplied by not more than one electrical utility service and metered by not more than one electrical meter.
- The application states “the existing garage conversion to a second dwelling unit. Multiple electric meters. I am disabled and on social security, fixed income and a special exception for multiple electric”.
 - A site plan, a floor plan, and elevations have been submitted none of which denotes a reference to “dwelling unit” or “electric meter”.
 - Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.
 - A copy of the “handicap” definition from this act was provided to the Board Administrator by the City Attorney’s Office. Section 3602 of this act states the following:
 - “(h) “Handicap” means, with respect to a person -
 1. a physical or mental impairment which substantially limits one or more of such person’s major life activities,
 2. a record of having such an impairment, or
 3. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”
 - Unlike most requests to the single family use regulations related to a special exception to authorize an additional dwelling unit where the request can be granted when, in the opinion of the board, the additional dwelling unit would not be used as rental accommodations; or adversely affect neighboring properties (and 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), the board is to consider this special exception for the handicapped request solely on whether they conclude that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.
 - Unlike most requests to the single family use regulations related to authorize more than one electrical utility service or more than one electrical meter on a lot in a single family, duplex, or townhouse district where the request can be granted when, in the opinion of the board, the additional electrical utility service or more than one electrical meter on a lot in a single family zoning will not be contrary to the public interests; not adversely affect neighboring properties; and not be used to conduct a use not permitted in the district where the building site is located; the board is to consider this special exception for the handicapped request solely on whether they conclude that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.
 - The applicant has the burden of proof in establishing the following:
 - The special exceptions are necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and

- there is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- If the Board were to grant the requests and wish to impose a site plan that documents the location of the dwelling units and/or electric meters on the site, none has been submitted to date.
- If the Board were to grant the requests and impose a condition that the special exceptions expire when a handicapped person no longer resides on the property, the additional dwelling unit and additional electric meter on the site would be allowed for as long as the applicant or any other handicapped person resides on the site.
- Note that granting these requests would not provide any relief to any code provision other than to single family use regulations related to allowing an additional dwelling unit and an additional electrical utility service and/or electrical meter on the site.

Timeline:

- August 2, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 8, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 8, 2018: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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;
 - A copy of the “handicap” definition from the Federal Fair Housing Amendments Act of 1988; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- October 30, 2018: 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 Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: November 12, 2018

APPEARING IN FAVOR: Luis Martinez, 8301 Maddox Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 178-112, on application of Luis Martinez, **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 for the handicapped to the single family use regulations requested by this applicant because our evaluation of the property and testimony shows that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy the dwelling.

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

- The special exception expires when a handicapped person no longer resides on the property.
- The applicant will deed restrict the property to prevent use of the additional dwelling unit as rental accommodations.

SECOND: Agnich

AYES: 4 – Richardson, Gambow, Shouse, Agnich

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION # 2: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 178-112, on application of Luis Martinez, **deny** the special exception to the single-family regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the relief is not necessary to afford a handicapped person equal opportunity to use and enjoy the dwelling.

SECOND: Agnich

AYES: 4 – Richardson, Gambow, Shouse, Agnich

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA178-117(OA)

BUILDING OFFICIAL'S REPORT: Application of Kamil Habibi for special exceptions to the fence standards and visual obstruction regulations at 11339 Royalshire Drive. This property is more fully described as Lot 11, Block 5/6378, and is zoned R-16 (A), which limits the height of a fence in the front yard to 4 feet and requires a 20-foot visibility triangle at the alley. The applicant proposes to construct an 8-foot-high fence in a required front yard, which will require a 4 foot special exception to the fence standards regulations, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 11339 Royalshire Drive

APPLICANT: Kamil Habibi

REQUESTS:

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

1. A request for a special exception to the fence standards regulations related to height of 4' is made to maintain a fence (an 8' high solid board-on-board wood fence) higher than 4' in height in one of the site's two required front yards (Yorkshire Drive); and
2. A request for special exception to the visual obstruction regulations are made to maintain portions of the aforementioned 8' high solid board-on-board wood fence in the 20' visibility triangle at where the alley meets Yorkshire Drive.

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.

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 (fence standards regulations):

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.

STAFF RECOMMENDATION (visual obstruction special exception):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to this request.
- Staff concluded that request for special exception to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items to be located in the visibility triangle do not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: R-16 (A) (Single family residential 16,000 square feet)
North: R-16 (A) (Single family residential 16,000 square feet)
South: R-16 (A) (Single family residential 16,000 square feet)
East: R-16 (A) (Single family residential 16,000 square feet)
West: R-16 (A) (Single family residential 16,000 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA178-071, Property located at 6207 Yorkshire Drive (the property to the east of the subject site)

On June 20, 2018, the Board of Adjustment Panel B granted requests for special exceptions to the fence standards and imposed the following condition: Compliance with the submitted site plan and elevation is required.

The case report stated that requests were made to maintain a 4' 3" – 7' 9" high solid stucco fence in one of the site's two required front yards (Royalshire Drive); and to maintain the aforementioned 4' 3" – 7' 9" high stucco fence located on the Royalshire Drive front lot line (or less than 5' from this front lot line).

GENERAL FACTS/STAFF ANALYSIS (fence standards regulations):

- The focus of the request for special exception to the fence standards regulations is maintaining an 8' high solid board-on-board wood fence in one of the site's two required front yards (Yorkshire Drive) on a site developed with a single-family home.
- The subject site is zoned R-16 (A) which requires a 35' front yard setback.

- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is located at the northwest corner of Royalshire Drive and Yorkshire Drive.
- Given the R-16 (A) single-family zoning and location of the corner lot subject site, it has two 35' front yard setbacks – a front yard setback along Royalshire Drive (the shorter of the two frontages of the subject site which is always a front yard in this case) and a front yard setback along Yorkshire Drive, (the longer of the two frontages which is typically considered a side yard where on this R-16 (A) zoned property where a 9' high fence could be erected by right). However, the site has a front yard setback along Yorkshire Drive in order to maintain continuity of the established front yard setback along this street frontage where lots to the west of the subject site “fronts” on Yorkshire Drive.
- No part of the application is made to address any fence in the site’s Royalshire Drive required front yard.
- The applicant has submitted a site plan and elevation of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 8’.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 100’ in length parallel to the Yorkshire Drive, and approximately 35’ perpendicular to Yorkshire Drive on the west and east sides of the site in this front yard setback.
 - The proposal is represented as being located approximately 9’ from the front property line. (The distance between the fence and the pavement line is approximately 10’).
- The Sustainable Development and Construction Department Board of Adjustment Senior Planner conducted a field visit of the site and surrounding area and noted one fence that appeared to be above 4’ in height and located in a front yard setback. The fence noted appears to be a result of special exceptions granted by the Board of Adjustment. (The “Zoning/BDA History” section of this case report provides details on this neighboring fence).
- As of November 2, 2018, no letters in opposition have been submitted and a petition with 8 signatures have been submitted in support.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to fence height will not adversely affect neighboring property.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal to be maintained in the location and of the heights as shown on these documents.

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

- The request for special exception to the visual obstruction regulations focuses on maintaining portions of an 8’ high solid board-on-board wood fence in the 20’ visibility triangle at where the alley meets Yorkshire Drive on a site developed with a single-family home.

- 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 applicant submitted a site plan and elevation indicating portions of an 8' high solid board-on-board wood fence located in the 20' visibility triangle at where the alley meets Yorkshire Drive.
- 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 the requests for special exception to the visual obstruction regulations, to maintain portions of an 8' high solid board-on-board wood fence located in the 20' visibility triangle at where the alley meets Yorkshire Drive does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items to be maintained in the 20' the visibility triangle where the alley meets Yorkshire Drive, to that what is shown on these documents – an 8' high solid board-on-board wood fence.

Timeline:

July 24, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 8, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel C.

October 10, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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 30, 2018: 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

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

October 30, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

BOARD OF ADJUSTMENT ACTION: November 12, 2018

APPEARING IN FAVOR: Kamil Habibi

APPEARING IN OPPOSITION: No One

MOTION: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA 178-117**, on application of Kamil Habibi, **grant** the request to construct and maintain an eight foot high fence as a special exception to the height requirement for fences and to maintain items in the visibility triangle as a special exception to the visual obstruction regulations in the Dallas Development Code, subject to the following condition:

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

SECOND: Shouse

AYES: 4 – Richardson, Gambow, Shouse, Agnich

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA178-120(SL)

BUILDING OFFICIAL’S REPORT: Application of William E. Ellis, Jr. for a special exception to the off-street parking regulations at 3225 Martin Luther King, Jr Boulevard. This property is more fully described as TR 1, Block 5/1354, and is zoned PD 595 (CC), which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for a medical clinic or ambulatory surgical center use, and provide 47 of the required 56 parking spaces, which will require a 9-space special exception to the off-street parking regulations.

LOCATION: 3225 Martin Luther King, Jr. Boulevard

APPLICANT: William E. Ellis, Jr.

REQUEST:

A request for a special exception to the off-street parking regulations of 9 spaces is made to transition the use within an existing vacant approximately 11,100 square foot one-story structure on the subject site from “office” to “medical clinic or ambulatory surgical center” use and provide 47 (or 84 percent) of the 56 required off-street parking spaces.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city’s thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use

automatically and immediately terminates if and when that use is changed or discontinued.

- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 9 spaces shall automatically and immediately terminate if and when the “medical clinic or ambulatory surgical center” use is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Senior Engineer indicated that he has no objections to the applicant’s request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 595 (CC) (Planned Development, Community Commercial)
North: PD 595 (CC) (Planned Development, Community Commercial)
South: PD 595 (CC) (Planned Development, Community Commercial)
East: PD 595 (CC) (Planned Development, Community Commercial)
West: PD 595 (MF-2) (SUP 1511) (Planned Development, Multifamily)

Land Use:

The subject site is developed with an existing vacant one-story structure that has approximately 11,100 square feet of floor area that the applicant intends to retain on the

site and lease with medical clinic use which requires a greater number of off-street parking spaces than the previous use on the subject site (office), and a greater number than what the applicant proposes to provide. The areas to the north, east, and south are developed with commercial/retail uses; and the area to the west is developed with DART transit center and park-and-ride use.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the off-street parking regulations of 9 spaces focuses on transitioning the use within an existing vacant approximately 11,100 square foot one-story structure on the subject site from “office” to “medical clinic or ambulatory surgical center” use and providing 47 (or 84 percent) of the 56 required off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirement:
 - Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area. (Office use is required to provide 1 space per 333 square feet of floor area).
- The Sustainable Development and Construction Senior Engineer has indicated that he has no objections to the request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the “medical clinic or ambulatory surgical center” use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 9 spaces (or a 16 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 9 spaces shall automatically and immediately terminate if and when the medical clinic use is changed or discontinued, the applicant would be allowed to lease and maintain the structure on the site with this specific use (“medical clinic or ambulatory surgical center”) with the specified square footage, and provide 47 of the 56 code required off-street parking spaces.

Timeline:

August 21, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 9, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 9, 2018: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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 30, 2018: 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 Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

October 30, 2018: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "Has no objections."

BOARD OF ADJUSTMENT ACTION: November 12, 2018

APPEARING IN FAVOR: William E. Ellis, Jr., 8800 High Meadows, Plano, TX

APPEARING IN OPPOSITION: No One

MOTION: **Agnich**

I move that the Board of Adjustment, in request No. BDA 178-120 on application of William E. Ellis, **grant** the request for a special exception to the parking regulations contained in the Dallas Development Code, as amended, subject to the following condition:

- The special exception of 9 spaces shall automatically and immediately terminate if and when the medical clinic or ambulatory surgical center use is changed or discontinued.

SECOND: **Shouse**

AYES: 4 – Richardson, Agnich, Gambow, Shouse

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA178-123(OA)

BUILDING OFFICIAL’S REPORT: Application of David Lloyd for variances to the front yard setback and fence height regulations at 4803 Victor Street. This property is more fully described as 1/2 Pt Lot 7, Block A/795, and is zoned PD 98, which requires a front yard setback of 25 feet, and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a structure and provide a 13-foot 10-inch front yard setback, which will require a 11-foot 2-inch variance to the front yard setback regulations, and to construct and/or maintain an 8-foot-high fence in a required front yard, which will require a 4-foot variance to the fence height regulations.

LOCATION: 4803 Victor Street

APPLICANT: David Lloyd

REQUESTS:

The following requests have been made on a site that is undeveloped:

1. A variance request to the front yard setback regulations for PD 98 is made to construct/maintain a two-story single family home structure with a total “slab area” of approximately 1,800 square feet or with a total “home size” of approximately 3,100 square feet to be located 13’ 10” from one of the site’s two front property lines (N. Prairie Avenue) or 11’ 2” into this 25’ front yard setback; and,
2. A variance request to the fence standards regulations for PD 98 related to fence height of 4’ is made to construct/maintain a fence (an 8’ high solid board-on-board wood fence) higher than 4’ in height in one of the site’s two required front yards (N. Prairie Avenue).

STANDARD FOR A FRONT YARD VARIANCE FOR PD 98:

PD 98 Section 51P-98.107(b)(3) states that the board of adjustment shall have the authority to grant variances from the terms of this article, in accordance with regulations and procedures specified in Article XXIX of Chapter 51 in the following matters:

- Permit such variances of the front yard, side yard, rear yard, lot width, lot depth, coverage, minimum sidewalk or setback standards, off-street parking or off-street loading, or visibility obstruction regulations where the literal enforcement of the provision of this article would result in an unnecessary hardship and where such variance is necessary to permit a specific parcel of land which differs from other parcels of land in the same district by being of such restricted area, shape, or slopes that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same district. A modification of standards established by this article may not be granted to relieve a self-created or personal hardship, not for financial reason only, nor may such modification be granted to permit any person a privilege in developing a parcel of land not permitted by this article to other parcels of land in this district.

STANDARD FOR A VARIANCE TO FENCE REGULATIONS FOR PD 98:

PD 98 Section 51P-98.107(b)(2) states that the board of adjustment shall have the authority to grant variances from the terms of this article, in accordance with regulations and procedures specified in Article XXIX of Chapter 51 in the following matters:

- Permit such variances of fence heights when, in the opinion of the board, such fence will not adversely affect neighboring property. Variances of fence heights providing screening around parking facilities are excluded.

STAFF RECOMMENDATION (VARIANCE TO FRONT YARD REGULATIONS FOR PD 98):

Approval, subject to the following condition;

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the PD 98 zoning district. It is restrictive in area due to having two, 25' front yard setbacks when most lots in this zoning district have one 25' front yard setback. The 50' wide subject site has 20' of developable width available once a 25' front yard setback is accounted for on the southwest and a 5' side yard setback is accounted for on the northeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width. In addition, the variance should be granted because of the restrictive area of the subject site at only 5,300 square feet in the PD 98 zoning district where lots are typically 7,500 square feet.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that the total buildable area of the subject site is approximately 1,600 square feet is commensurate to 9 other properties in the same PD 98 zoning district that have an average total buildable area of approximately 4,900 square feet.

STAFF RECOMMENDATION (VARIANCE TO FENCE REGULATIONS FOR PD 98):

No staff recommendation is made on this request for a variance to the fence regulations for PD 98 since the basis for this type of appeal is when in the opinion of the board, such variances of fence heights will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: PD 98 (Planned Development)
North: PD 98 (Planned Development)
South: PD 98 (Planned Development)

East: PD 98 (Planned Development)
West: PD 98 (Planned Development)

Land Use:

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

Zoning/BDA History:

1. BDA145-040, Property at 4734 Tremont Street (two lots northwest of the subject site) On April 22, 2015, the Board of Adjustment Panel B granted a variance to the front yard setback regulations. The case report stated that the requests were made to replace an existing one-story nonconforming single-family home structure on the subject site with a two-story single family home with (according to the submitted revised site plan) a building footprint of about 2,000 square feet and a total living area of about 2,600 square feet, part of which would be located 5' from one of the site's two front property lines (N. Prairie Avenue) or 20' into this 25' front yard setback.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request for a variance to the front yard setback regulations of 20' focuses on constructing and maintaining a two-story single family home structure with a total "slab area" of approximately 1,800 square feet or with a total "home size" of approximately 3,100 square feet to located 13' 10" from one of the site's two front property lines (N. Prairie Avenue) or 11' 2" into this 25' front yard setback.
- PD 98 states that general standards for development of single-family uses with regard to setbacks must be in accordance with the provisions of the Residential - 7,500 Square Feet District of Chapter 51. Structures on lots zoned R-7.5 are required to provide a minimum front yard setback of 25.
- The subject site is located at the northwest corner of Victor Street and N. Prairie Avenue. Regardless of how the structure is proposed to be oriented to front Victor Street, the subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along Victor Street, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25' front yard setback along N. Prairie Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. However, the site's N. Prairie Avenue frontage that would function as a side yard on the property is treated as a front yard setback nonetheless, to maintain the continuity of the established front yard setback

established by the lots to the northwest that front/are oriented southwest towards N. Prairie Avenue.

- The submitted site plan indicates that the proposed home structure is located as close as 13' 10" from the N. Prairie Avenue front property line or 11' 2" into this 25' front yard setback.
- According to DCAD records, there are no "main improvement" or "no additional improvements" for property addressed at 4803 Victor Street.
- The subject site is flat, regular in shape and according to the submitted application is 0.121 acres (or approximately 5,300 square feet) in area. The site is zoned PD 98 where lots are typically 7,500 square feet in area.
- Most lots in the PD 98 zoning district have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback; this site has two 25' front yard setbacks and one 5' side yard setback.
- The site plan represents that approximately 1/3 of the home structure is located in the 25' N. Prairie Avenue front yard setback.
- The 50' wide subject site has 20' of developable width available once a 25' front yard setback is accounted for on the southwest and a 5' side yard setback is accounted for on the northeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width.
- The applicant submitted a document with this application, indicating among other things that the total buildable area of the subject site is 1,600 square feet, and the buildable average of 9 other properties in the same zoning district is approximately 4,900 square feet.
- The applicant has the burden of proof in establishing the following:
 - That permitting such a variance of the front yard where the literal enforcement of the provision of this article would result in an unnecessary hardship and where such variance is necessary to permit a specific parcel of land which differs from other parcels of land in the same PD 98 district by being of such restricted area, shape, or slopes that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same PD 98 district.
 - A modification of standards established by this article may not be granted to relieve a self-created or personal hardship, not for financial reason only, nor may such modification be granted to permit any person a privilege in developing a parcel of land not permitted by this article to other parcels of land in this district.
- 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 home structure that would be located 13' 10" from one of the site's two front property lines (N. Prairie Avenue) or 11' 2" into this 25' front yard setback.

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- The request for a variance to the fence standard regulations for PD 98 related to height of 4' focuses on constructing and maintaining an 8' high solid board-on-board wood fence in one of the site's two required front yards (N. Prairie Avenue).

- PD 98 states that general standards for development of single-family uses with regard to setbacks must be in accordance with the provisions of the Residential - 7,500 square feet District of Chapter 51. Structures on lots zoned R-7.5 are required to provide a minimum front yard setback of 25’.
- PD 98 Section 51P-98.10 (a) (b) (2) states that the board of adjustment shall have the authority to grant variances from the terms of this article, in accordance with regulations and procedures specified in Article XXIX of Chapter 51 in the following matters:
 - Permit such variances of fence heights when, in the opinion of the board, such fence will not adversely affect neighboring property. Variances of fence heights providing screening around parking facilities are excluded.
- The applicant submitted a site plan and elevation representing the proposed fence in the front yard setback with notations indicating that the proposal reaches a maximum height of 8’.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 53’ in length parallel to N. Prairie Avenue and approximately 25’ perpendicular to on the northwest and the southeast side of the site in this front yard setback.
 - The proposal is represented as being located approximately at the front property line or approximately 8’ from the pavement line.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area from and noted no other fence that appeared to be over 4’ in height and in a front yard setback.
- The applicant has the burden of proof in establishing that the variance to the fence standards regulations related to fence height of 8’ will not adversely affect neighboring property.
- As of November 2nd, no letters have been submitted in support of or in opposition to this request.
- Granting this variance with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4’ in height to be located in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

September 13, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 8, 2018: The Board of Adjustment Secretary assigned this case to the Board of Adjustment Panel C.

October 10, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the October 24th deadline to

submit additional evidence for staff to factor into their analysis; and the November 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standards that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 24, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 30, 2018: 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 Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: November 12, 2018

APPEARING IN FAVOR: Bang Dang, 4414 Buena Vista St., #18, Dallas, TX
Rizwan Faruqui, 4414 Buena Vista St., Dallas TX

APPEARING IN OPPOSITION: Edward Anderson, 4726 Victor St., Dallas, TX 75246
Jesse Moleno, 4809 Victor St., Dallas, TX 75246
Bill Arnquist, 4701 Sycamore St., Dallas, TX

MOTION #1

To grant a request for a variance from the front yard setback regulations:

MOTION: **Shouse**

I move that the Board of Adjustment, in Appeal No. BDA 178-123, on application of David Lloyd, **grant** the eleven-foot two-inch variance to the front yard setback requirements contained in PD 98, 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 contained in PD 98, 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: **Agnich**

AYES: 3 –Richardson, Agnich, Shouse

NAYS: 1 - Gambow

MOTION FAILED: 3 – 1

MOTION: **Gambow**

I move that the Board of Adjustment, in Appeal No. BDA 178-123, on application of David Lloyd, **deny** the variance to the front yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the 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 NOT result in unnecessary hardship to this applicant.

SECOND: **Agnich**

AYES: 4 - Gambow, Shouse, Agnich, Richardson

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION #2

To grant the applicant's request for a variance from the height requirements for fences:

MOTION: **Agnich**

I move that the Board of Adjustment, in Appeal No. BDA 178-123, on application of David Lloyd, **grant** the request of this applicant to construct and maintain an eight foot high fence as a variance to the height requirement for fences contained in PD 98, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

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

SECOND: **Shouse**

AYES: 3 - Richardson, Shouse, Agnich

NAYS: 1 - Gambow

MOTION FAILED: 3 – 1

MOTION: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 178-123, on application of David Lloyd, **deny** the variance requested by this applicant to maintain an eight-foot high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECOND: Agnich

AYES: 4 - Shouse, Agnich, Richardson, Gambow

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

By unanimous consent, the meeting was adjourned at 2:40 p.m. for November 12, 2018.

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.