

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, November 13, 2018**

MEMBERS PRESENT AT BRIEFING: Elizabeth Nelson, regular member, Jay Narey, regular member Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Pete Schulte, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist and Elaine Hill, Board Secretary

MEMBERS PRESENT AT HEARING: Peter Schulte, Chair, Elizabeth Nelson, regular member, Jay Narey, regular member Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No One

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist and Elaine Hill, Board Secretary

11:04 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 13, 2018** docket.

1:10 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 A, October 16 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: November 13, 2018

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA178-091OA)

BUILDING OFFICIAL'S REPORT: Application of Christi Guess for a special exception to the visual obstruction regulations at 714 Monte Vista Drive. This property is more fully described as Lot 1, Block 9/2217, and is zoned CD 6, which requires a 20 foot visibility triangle at driveway 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: 714 Monte Vista Drive

APPLICANT: Christi Guess

REQUEST:

A request for special exception to the visual obstruction regulations is made to maintain portions of a 6' high solid wood fence with a 6' high swing wood gate in the 20' visibility triangle on the southwest side of the driveway into the site from Lindsley Avenue on a site developed with a single-family home.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION:

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 the 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: CD 6 (Conservation District)

North: CD 6 (Conservation District)
South: CD 6 (Conservation District)
East: CD 6 (Conservation District)
West: CD 6 (Conservation District)

Land Use:

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

- This request for special exception to the visual obstruction regulations focuses on maintaining portions of a 6’ high solid wood fence with a 6’ high swing wood gate in the 20’ visibility triangle on the southwest side of the driveway into the site from Lindsley Avenue on a site developed with a single-family home.
- 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 Conservation District 6 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 a 6’ high solid wood fence with a 6’ high swing wood gate in the 20’ visibility triangle on the southwest side of the driveway into the site from Lindsley 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 the request for special exception, to the visual obstruction regulations, to maintain portions of a 6’ high solid wood fence with a 6’ high swing wood gate in the 20’ visibility triangle on the southwest side of the driveway into the site from Lindsley Avenue do 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 southwest side of the 20’ drive approach visibility triangle into the site from Lindsley

Avenue to that what is shown on these documents – portions of a 6’ high solid wood fence and a 6’ high wood swing gate.

Timeline:

April 12, 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 A.

October 10, 2017: The Sustainable Development and Construction Department Senior Planner emailed the applicant/owner 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 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 13, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Nelson

I move to **grant** the Board of Adjustment application **BDA178-091** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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 and elevation is required.

SECONDED: Jones

AYES: 5 – Schulte, Nelson, Narey, Sibley, Jones

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-119(OA)

BUILDING OFFICIAL’S REPORT: Application of Harold Lewis for a variance to the front yard setback regulations at 4323 Aztec Drive. This property is more fully described as Lot 8, Block 1/6083, and is zoned R 7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 5 foot front yard setback, which will require a 20 foot variance to the front yard setback regulations.

LOCATION: 4323 Aztec Drive

APPLICANT: Harold Lewis

REQUEST:

A request for a variance to the front yard setback regulations of 20’ is made to construct and maintain a one-story single family home structure with a total “slab area” of approximately 2,400 square feet or with a total “home size” of approximately 1,900 square feet, part of which is to be located 5’ from one of the site’s two front property lines (Moffatt Avenue) or 20’ into this 25’ 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 concluded that 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 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 northwest. 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.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that the total home size of the proposed home on the subject site at approximately 1,900 square feet is commensurate to 3 other homes in the same R-7.5 (A) zoning district that have an average home size of approximately 1,700 square feet.

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 undeveloped. The areas to the north, south, west, and east 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:

- This request for variance to the front yard setback requirement of 20' focuses on constructing and maintaining a one-story single family home structure with a total "slab area" of approximately 2,400 square feet or with a total "home size" of approximately 1,900 square feet, part of which is to be located 5' from one of the site's two front property lines (Moffatt Avenue) or 20' into this 25' front yard setback on a site that is undeveloped.
- The property is located in an R-7.5 (A) zoning district which requires a minimum front yard setback of 25 feet.
- The subject site is located at the northwest corner of Aztec Drive and Moffatt Avenue. Regardless of how the structure is proposed to be oriented to front Aztec Drive, the subject site has a 25' front yard setback along both street frontages. The site has a 25' front yard setback along Aztec Drive, 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 Moffatt 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 Moffatt 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 west that front/are oriented southeast towards Moffatt Avenue.
- The submitted site plan indicates the proposed structure is located 5' from the Moffatt Avenue's front property line or 20' into this 25' front yard setback.
- According to DCAD records, there are "no main improvement" or "no additional improvements" for property addressed at 4323 Aztec Drive.
- The subject site is flat, rectangular in shape (approximately 150' x 50'), and according to the submitted application is 0.175 acres (or approximately 7,600 square feet) in area. The site is zoned R-7.5 (A) where lots are typically 7,500 square feet in area.
- Most lots in the R-7.5 (A) zoning district have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback; this site has two 55' front yard setbacks and two 5' side yard setbacks.
- The submitted site plan represents that approximately 1/2 of the structure is located in the 55' Moffatt 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 southeast and a 5' side yard setback is accounted for on the northwest. 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.
- No variance would be necessary if the Moffatt Avenue frontage were a side yard since the site plan represents that the proposed home is 5' from the Moffatt Avenue property line and the side yard setback for properties zoned R-7.5 (A) is 5'.
- The applicant has submitted a document indicating among other things that the total home size of the proposed home on the subject site is approximately 1,900 square feet, and the average of 3 other properties in the same zoning is approximately 1,700 square feet.
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5 (A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5 (A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the single-family structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 5’ from the site’s Moffatt Avenue front property line (or 20’ into this 25’ front yard setback).

Timeline:

- August 15, 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 A.
- 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 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 13, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Nelson**

I move to **grant** the Board of Adjustment application **BDA178-119** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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.

SECONDED: **Jones**

AYES: 5 – Schulte, Nelson, Narey, Sibley, Jones

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-126OA)

BUILDING OFFICIAL’S REPORT: Application of Andrew Williams for a special exception to the visual obstruction regulations at 5746 Velasco Avenue. This property is more fully described as Lot 12, Block 8/1888, and is zoned CD 12, which requires a 20 foot visibility triangle at driveway 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: 5746 Velasco Avenue

APPLICANT: Andrew Williams

REQUEST:

A request for special exception to the visual obstruction regulations is made to modify and maintain portions of an 8' high solid wood fence in the 20' visibility triangle on the north side of the driveway into the site from Matilda Avenue on a site developed with a single-family home.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION:

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 the request.
- Staff concluded that request for special exception to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the item to modified and maintained in the visibility triangle does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: CD 12 (Conservation District)
North: CD 12 (Conservation District)
South: CD 12 (Conservation District)
East: CD 12 (Conservation District)
West: CD 12 (Conservation District)

Land Use:

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

- This request for special exception to the visual obstruction regulations focuses on modifying and maintaining portions of an 8' high solid wood fence in the 20' visibility triangle on the north side of the driveway into the site from Matilda Avenue on a site developed with a single-family home.
- 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 Conservation District 12 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 in the 20' visibility triangle on the north side of the driveway into the site from Matilda 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 the request for a special exception, to the visual obstruction regulations to modify and maintain portions of an 8' high solid wood fence in the 20' visibility triangle on the north side of the driveway into the site from Matilda Avenue do 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 modified and maintained in the north side of the 20' drive approach visibility triangle into the site from Matilda Avenue to that what is shown on these documents.

Timeline:

- September 6, 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 A.
- October 10, 2017: The Sustainable Development and Construction Department Senior Planner emailed the applicant/owner 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 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" (Note that the submitted site plan shows that a 17' by 17' visibility triangle will be maintained on the north side of the driveway into the site from Matilda Avenue).

BOARD OF ADJUSTMENT ACTION: November 13, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Nelson**

I move to **grant** the Board of Adjustment application **BDA178-126** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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 and elevation is required.

SECONDED: **Jones**

AYES: 5 – Schulte, Nelson, Narey, Sibley, Jones

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-128(OA)

BUILDING OFFICIAL'S REPORT: Application of Jorge Hernandez for a variance to the front yard setback regulations at 13315 Garden Grove Drive. This property is more fully described as Tract 118, Block 8822, and is zoned R-10(A), which requires a front yard setback of 30 feet. The applicant proposes to construct and/or maintain a structure and provide a 9 foot 8 inch front yard setback, which will require a 20 foot 4 inch variance to the front yard setback regulations.

LOCATION: 13315 Garden Grove Drive

APPLICANT: Jorge Hernandez

REQUEST:

A request for variance to the front yard setback regulations of 20' 4" is made to maintain a nonconforming structure (single-family home) constructed in the 1940's, and to maintain an addition to the existing nonconforming single-family home, both of which are located 9' 8" from the front property line or 20' 4" into the 30' 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:

Denial

Rationale:

- Staff concluded that the applicant had not substantiated how 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 it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-10 (A) zoning district. The subject site at approximately one-acre (or

approximately 40,000 square feet) in area is approximately 4 times larger than lots typically found in the R-10(A) zoning district that are 10,000 square feet in area.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)
North: R-10(A) (Single family district 10,000 square feet)
South: PD 162 (Planned Development)
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 developed with a single-family home. The areas to the north, south, east, and west are developed with single-family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- The request for a variance to the front yard setback regulations of 20' 4" focuses on; 1) maintaining a nonconforming structure (single-family home) constructed in the 1940's and 2) maintaining an addition to the existing nonconforming single-family home, both of which are located 9' 8" from the front property line or 20' 4" into the 30' front yard setback.
- Structures on lots zoned R-10 (A) are required to provide a minimum front yard setback of 30'.
- A site plan has been submitted denoting the existing nonconforming structure home and existing addition are located 9' 8" from the site's front property line (or 20' 4" into the 30' front yard setback).
- DCAD records indicate the following improvements for property located at 13315 Garden Grove Drive: "main improvement: a structure with 744 square feet of living area built in 1940" and "additional improvements: a 400 square foot attached garage, and a 400 square foot detached garage".
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.

- The applicant has chosen to seek a variance to the front yard setback regulations for both the nonconforming and addition located in the front yard setback.
- The subject site is rectangular in shape, flat, and according to the application, is 0.942 acres (or approximately 41,000 square feet) in area. The site is zoned R-10 (A) where lots are typically 10,000 square feet in area.
- 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-10 (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-10 (A) zoning classification.
- If the Board were to grant this front yard setback variance request and impose the submitted site plan as a condition, the structure and addition in the front yard setback would be limited to what is shown on this document- which is a structure and addition located as close as 9' 8" from the site's front property line or as much as 20' 4" into the required 30' front yard setback.

Timeline:

- September 12, 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 A.
- October 10, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the 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.

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

BOARD OF ADJUSTMENT ACTION: November 13, 2018

APPEARING IN FAVOR: Jorge Hernandez, 13315 Garden Grove Dr.
Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION #1: Sibley

I move that the Board of Adjustment, in Appeal No. BDA 178-128, on application of Jorge Hernandez, **grant** the twenty-foot four-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.

SECONDED: No One Seconded the motion

AYES:

NAYS: 4 - Schulte, Nelson, Narey, Jones

MOTION FAILED: 1 – 4

MOTION #2: Schulte

I move that the Board of Adjustment, in Appeal No. BDA 178-128, on application of Jorge Hernandez, **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.

SECONDED: Jones

AYES: 4 - Schulte, Nelson, Narey, Jones

NAYS: 1 - Sibley

MOTION PASSED: 4 – 1

FILE NUMBER: BDA178-140(OA)

BUILDING OFFICIAL’S REPORT: Application of Monica Torrez for a variance to the front yard setback regulations at 7301 Oakmore Drive. This property is more fully described as Lot 18, Block A/8606, 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 an 11 foot 6 inch front yard setback, which will require a 13 foot 6 inch variance to the front yard setback regulations.

LOCATION: 7301 Oakmore Drive

APPLICANT: Monica Torrez

November 13th public hearing note:

- The applicant submitted additional written documentation to the Board at the public hearing.

REQUEST:

A request for a variance to the front yard setback regulations of 13’ 6” is made to maintain portion of a one-story single-family home structure part of which is to be located 11’ 6” from the front property line or 13’ 6” into this 25’ front yard setback on a site developed with single family home.

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:

Denial

Rationale:

- While staff recognized the restrictive area of the subject site at only 7,143 square feet in the R-7.5 (A) zoning district where lots are typically 7,500 square feet, staff concluded that the applicant had not substantiated how 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 it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-7.5 (A) zoning district.

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, west, and east 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:

- This request for a variance to the front yard setback regulations of 13' 6" focuses on maintaining portion of a one-story single-family home structure part of which is located 11' 6" from the front property line or 13' 6" into this 25' front yard setback on a site developed with single family home.
- The property is located in an R-7.5 (A) zoning district which requires a minimum front yard setback of 25 feet.
- The subject site is located at the northwest corner of Oakmore Drive and White Ash Road. This site has one front yard setback on Oakmore Drive.

- The submitted site plan represents that an existing structure is located as close as 11' 6" from the site's front property line (or 13' 6" into the 25' front yard setback).
- According to DCAD records, the "main improvement" for property addressed at 7301 Oakmore Drive is a structure built in 1979 with 2,392 square feet of total/living area with the following "additional improvements": a 418 square-foot attached garage and a 400 square-foot detached carport.
- The subject site is flat, rectangular in shape, and according to the application, is 0.164 acres (or 7,143 square feet) in area. The site is zoned R-7.5 (A) where the typical lot size is 7,500 square feet.
- The site plan represents that approximately 1/6 of the structure is located in the 25' front yard 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 structure that is located 11' 6" from the site's front property line (or 13' 6" into this 25' front yard setback).

Timeline:

- October 1, 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 A.
- 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 12th 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.

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

BOARD OF ADJUSTMENT ACTION: November 13, 2018

APPEARING IN FAVOR: Monica Torrez, 624 Ocean View Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move that the Board of Adjustment, in Appeal No. BDA 178-140, on application of Monica Torrez, **grant** the thirteen-foot six-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.

SECONDED: **Narey**

AYES: 5 – Schulte, Nelson, Narey, Sibley.

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Jones**

I move to adjourn this meeting.

SECONDED: **Schulte**

AYES: 4 – Schulte, Nelson, Jones, Sibley

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

1:51 P. M.: Board Meeting adjourned for **November 13, 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.