

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, NOVEMBER 14, 2017**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, vice-chair, Elizabeth Nelson, regular member, John Jones, regular member, Jay Narey, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner, Kanesia Williams, Asst. City Atty., Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Peter Schulte, vice-chair, Elizabeth Nelson, regular member, John Jones, regular member, Jay Narey, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Neva Dean, Asst. Director of Sustainable Development and Construction, Steve Long, Chief Planner, Kanesia Williams, Asst. City Atty., Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

11:35 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 14, 2017** docket.

1:16 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

To approve the Board of Adjustment Panel October 17, 2017 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2017

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA167-112(SL)

BUILDING OFFICIAL’S REPORT: Application of Steven Wood for a variance to the front yard setback regulations at 4170 Gladewater Road. This property is more fully described as Lot 6C, Block 4/5848, 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 16 foot 6 inch front yard setback (a 17 foot 6 inch setback measured at grade with a 1 foot roof eave), which will require an 8 foot 6 inch variance to the front yard setback regulations.

LOCATION: 4170 Gladewater Road

APPLICANT: Steven Wood

REQUEST:

A request for a variance to the front yard setback regulations of 8’ 6” is made to construct and maintain a two-story single family home structure with a total “slab area” of approximately 1,900 square feet or with a total “home size” of approximately 2,500 square feet, part of which is to be located 16’ 6” (roof eave) from one of the site’s two front property lines (Custer Drive) or 8’ 6” into this 25’ front yard setback on a site that is undeveloped.

STANDARD FOR A VARIANCE:

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 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.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that that the total home size of the proposed home on the subject site at approximately 2,500 square feet is commensurate to 15 other homes in the same R-7.5(A) zoning district that have average home size of approximately 2,700 square feet.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family residential 7,500 square feet)
North: R-7.5(A) (Single family residential 7,500 square feet)
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 undeveloped. The areas to the north and east are developed with single family uses, and the areas to the south and west are undeveloped.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for variance to the front yard setback regulations of 8' 6" focuses on constructing and maintaining a two-story single family home structure with a total "slab area" of approximately 1,900 square feet or with a total "home size" of approximately 2,500 square feet, part of which (roof eave) is to be located 16' 6" from one of the site's two front property lines (Custer Drive) or 8' 6" into this 25' front yard setback on an undeveloped site.
- 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 north corner of Gladewater Road and Custer Drive. Regardless of how the structure is proposed to be oriented to front Gladewater Road, the subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along Gladewater Road, 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 Custer Drive, 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. But the site's Custer Drive 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 east that front/are oriented southward towards Custer Drive.
- The submitted scaled site plan indicates that the wall of the proposed structure is located 17' 6" from the Custer Drive front property line or 7' 6" into this 25' front yard setback but the application is made for a variance of "8' 6" to the FYSB on Custer to include the 1' roof overhang and to establish a 17' 6" setback".
- The Dallas Development Code states that cantilevered roof eaves and balconies may project up to five feet into the required front yard.
- According to DCAD records, there are "no main improvement" or "no additional improvements for property addressed at 4170 Gladewater Road.
- The subject site is flat, rectangular in shape (approximately 144' x 50'), and according to the submitted application is 0.17 acres (or approximately 7,200) 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 25' front yard setbacks and two 5' side yard setbacks.
- The site plan represents that approximately 1/4 of the structure is located in the 25' Custer Drive front yard setback.
- The approximately 50' wide subject site has approximately 20' of developable width available once a 25' front yard setback is accounted for on the south and a 5' side yard setback is accounted for on the north. If the lot were more typical to others in the zoning district with only one front yard setback, the approximately 50' wide site would have approximately 40' of developable width.
- No variance would be necessary if the Custer Road frontage were a side yard since the site plan represents that the proposed home is 16' 6' from the Custer Road 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 that the total home size of the proposed home on the subject site is approximately 2,500

square feet, and the average of 15 other properties in the same zoning is approximately 2,700 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 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 16’ 6” from the site’s Custer Drive front property line (or 8’ 6” into this 25’ front yard setback).

Timeline:

- August 18, 2017: 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 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 9, 2017: 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 25th deadline to submit additional evidence for staff to factor into their analysis; and the November 3rd 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 31, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- October 31, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the

Building Official, the Assistant Building Official, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department 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 14, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Sibley

I move to grant that the Board of Adjustment grant application **BDA 167-112(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. 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: Jones

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-123(SL)

BUILDING OFFICIAL’S REPORT: Application of Juan Geovanny Ruiz Tudor for a special exception to the fence standards at 14541 Spicewood Drive. This property is more fully described as Lot 1A, Block 8825, and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards.

LOCATION: 14541 Spicewood Drive

APPLICANT: Juan Geovanny Ruiz Tudor

REQUEST:

A request for a special exception to the fence standards related to fence height of 4' is made to construct and maintain a fence higher than 4' in one of the site's two front yard setbacks (Edd Road) - an 8' high solid wood fence on a site that is developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the fence height of 4' focuses on constructing and maintaining a fence higher than 4' in in one of the site's two front yard setbacks (Edd Road) - an 8' high solid wood fence on a site that is developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.

- The property is located in an R-10(A) zoning district which requires a minimum front yard setback of 30 feet.
- The subject site is located at the north corner of Spicewood Drive and Edd Road. Regardless of how the existing structure is oriented to front Spicewood Drive, the subject site has 30' front yard setbacks along both street frontages. The site has a 30' front yard setback along Spicewood 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 30' front yard setback along Edd Road, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where the Dallas Development Code allows a 9' high fence. But the site's Edd Road frontage that functions 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 northeast that front/are oriented southeastward towards Edd Road.
- The submitted site plan and elevation indicates that the fence reaches a maximum height of 8' and that the only fence that exceeds 4' in height is located in the 30' Edd Road front yard setback.
- The submitted site plan denotes the following:
 - The proposed fence over 4' in height in the Edd Road front yard setback is represented as being approximately 100' in length parallel to this street, and an approximately 25' in length perpendicular to this street on the northeast and southwest sides of the site in this front yard setback.
 - The proposed fence is represented as being located approximately 5' from the Edd Road front property line.
- No single family lot fronts the proposed fence on the subject site. The lot directly adjacent to the site's Edd Road frontage has no fence in its front yard that exceeds 4' in height.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 400' northeast and southwest of the subject site) and noted no other fences that appeared to be over 4' in height and in a front yard setback.
- As of November 3, 2017, no letters had been submitted in support of the application, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence standards related to fence height of 4' 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 exceeding 4' in height to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

September 5, 2017: 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 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 9, 2017: 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 25th deadline to submit additional evidence for staff to factor into their analysis; and the November 3rd 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 31, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department 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 14, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move to grant that the Board of Adjustment grant application **BDA 167-123(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. 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.

SECONDED: **Jones**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-129(SL)

BUILDING OFFICIAL’S REPORT: Application of Matthew Polan for a special exception to the fence standards at 3331 Urban Avenue. This property is more fully described as a 0.45 acre tract in Block 5821 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain an 8 foot 4 inch high fence in a required front yard, which will require a 4 foot 4 inch special exception to the fence standards.

LOCATION: 3331 Urban Avenue

APPLICANT: Matthew Polan

REQUEST:

A request for a special exception to the fence standards related to fence height of 4’ 4” is made to maintain a fence higher than 4’ in one of the site’s two front yard setbacks (Fairdale Avenue) - an approximately 8’ 1” high solid wood fence parallel to this street, and an approximately 8’ 4” high fence (a 4’ 1” high wood fence atop an approximately 4’ 1” high retaining wall) perpendicular to this street on a site that is developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

- Site: R-7.5(A) (Single family residential 7,500 square feet)
- North: R-7.5(A) (Single family residential 7,500 square feet)
- 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 a single family home. The areas to the north, south, and west are undeveloped, and the area to the east is developed with single family residential uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the fence height of 4' 4" focuses on maintaining a fence higher than 4' in in one of the site's two front yard setbacks (Fairdale Avenue) - an approximately 8' 1" high solid wood fence parallel to this street, and an approximately 8' 4" high fence (an 4' 1" high wood fence atop an approximately 4' 1" high retaining wall) perpendicular to this street on a site that is developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The 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 southwest corner of Urban Avenue and Fairdale Avenue. Regardless of how the structure is oriented to front Urban Avenue, the subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along Urban Avenue, 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 Fairdale Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where the Dallas Development Code allows a 9' high fence. But the site's Fairdale Avenue frontage that functions 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 northward towards Fairdale Avenue.
- The submitted site plan and elevation indicates that the fence reaches a maximum height of 8.33 feet and that the only fence that exceeds 4' in height is located in the 25' Fairdale Avenue front yard setback.
- The submitted site plan denotes the following:
 - The proposal/existing fence over 4' in height in the Fairdale Avenue front yard setback is represented as being approximately 60' in length parallel to this street, and an approximately 14' in length perpendicular to this street on the west side of the site in this front yard setback.
 - The proposal/existing fence is represented as being located approximately 9' – 12' from the front property line.
- One single family lots fronts the existing fence on the subject site. The lot has no fence in its front yard.

- The Board Administrator conducted a field visit of the site and surrounding area (approximately 400' east and west of the subject site) and noted no other fences that appeared to be over 4' in height and in a front yard setback.
- As of November 3, 2017, no letters had been submitted in support of the application, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence standards related to fence height of 4' 4" 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/existing fence exceeding 4' in height to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

September 21, 2017: 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 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

October 9, 2017: 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 25th deadline to submit additional evidence for staff to factor into their analysis; and the November 3rd 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 31, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department 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 14, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move to grant that the Board of Adjustment grant application **BDA 167-129(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. 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.

SECONDED: **Jones**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Nelson**

I move to adjourn this meeting.

SECONDED: **Sibley**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

1:22 P. M.: Board Meeting adjourned for **November 14, 2017**

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.