

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
MONDAY, NOVEMBER 16, 2020**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Robert Agnich, regular member, Roger Sashington, regular member, Moises Medina, regular member and Jared Slade, alternate member

MEMBERS ABSENT FROM BRIEFING: Judy Pollock, regular member

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Robert Agnich, regular member, Roger Sashington, regular member, Moises Medina, regular member and Jared Slade, alternate member

MEMBERS ABSENT FROM HEARING: Judy Pollock, regular member

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

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

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, **November 16, 2020 docket.**

BOARD OF ADJUSTMENT ACTION: November 16, 2020

1:01 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 19, 2020 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: November 16, 2020

MOTION: Medina

Approval of the Board of Adjustment Panel C, October 19, 2020 public hearing minutes.

SECONDED: Hounsel

AYES: 5 – Hounsel, Agnich, Slade, Sashington, Medina

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-111(OA)

BUILDING OFFICIAL'S REPORT: Application of Theodore Kerico represented by Ronnie Hebel for a special exception to the landscaping regulations at 10611 New Church Rd. This property is more fully described as Lot 3-A, Block N/8092, and is zoned a CS Commercial Service District, which requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 10611 New Church Rd.

APPLICANT: Theodore Kerico
represented by Ronnie Hebel

REQUEST:

A request for a special exception to the landscape regulations is made to remodel an existing building and to construct/maintain two additional buildings to support a truck sales and service use and not fully meet the landscape regulations. The applicant seeks to reduce the required landscape provisions for this site.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property.

- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the board shall consider the following factors:

- the extent to which there is residential adjacency.
- the topography of the site.
- the extent to which landscaping exists for which no credit is given under this article.
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The chief arborist recommends approval of the submitted alternate landscape plan for a landscape on an established use with minimal available space to provide new landscape improvements. Full compliance with the landscape requirements of Article X would be an unreasonable burden on the current operation and use of the property, and the special exception would have no negative impacts on surrounding uses.

BACKGROUND INFORMATION:

Zoning

- Site: CS (Commercial Service District)
North: CS (Commercial Service District) & CR (Community Retail District)
East: CS (Commercial Service District)
South: CR (Community Retail District) & R-7.5 (Single Family District)
West: CR (Community Retail District)

Land Use:

The subject site is developed with truck sales and service use. The area to the north is developed with public right-of-way (LBJ Expressway). The areas to the east and west are developed with retail/commercial uses. The area to the south is developed with residential uses.

Zoning/BDA History:

There have not been any recent board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

A request for a special exception to the landscape regulations is made to remodel an existing building and to construct/maintain two additional buildings to support a truck sales and service use and not fully meet the landscape regulations. The applicant seeks to reduce the required landscape provisions for this site.

The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period. In this case, the existing structure will be remodeled and two additional structures will be erected. This new construction triggers compliance with landscape regulations.

The City of Dallas chief arborist submitted a memo regarding the applicant's request (Attachment A).

The chief arborist's memo states the following with regard to "request":

The applicant is seeking a special exception to the landscaping requirements of Article X. New floor area expansion on the property requires compliance with new landscaping per code on a site with current use and commercial activities. The applicant seeks a reduced landscape provision to allow for the continued use of their work areas.

The chief arborist's memo states the following with regard to "provision":

The proposed landscape plan provides for two new trees (one in the street buffer zone) and existing plant materials along the front of the existing main structure. Most of the property is paved and utilized for business activities and vehicle maneuvering.

The chief arborist's memo states the following with regard to "deficiencies":

The proposed landscape plan and site plan does not provide for the street buffer zone requirements for neither New Church Road nor the LBJ Freeway frontages. No Article X designated mandatory provisions or design options are stated on the plan.

The chief arborist's revised memo states the following with regard to the "recommendation":

The chief arborist recommends approval of the submitted alternate landscape plan for a landscape on an established use with minimal available space to provide new landscape

improvements. Full compliance with the landscape requirements of Article X would be an unreasonable burden on the current operation and use of the property, and the special exception would have no negative impacts on surrounding uses.

If the board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be provided an exception from the required landscape provisions.

Timeline:

September 29, 2020: 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 16, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

October 16, 2020: The Board Administrator 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 27, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the November 6, 2020 deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 29, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

October 30, 2020: The City of Dallas Chief Arborist submitted a memo regarding this request (Attachment A).

BOARD OF ADJUSTMENT ACTION: November 16, 2020

APPEARING IN FAVOR:

Ronnie “Cash” Hebel 2025 Lakepointe Dr. #16B
Lewisville, TX

APPEARING IN OPPOSITION: None.

MOTION: **Hounsel**

I move that the Board of Adjustment in Appeal No. BDA 190-111 on application of Theodore Kerico, represented by Ronnie Hebel, for a special exception to the landscape regulations contained in the Dallas Development Code, is **granted**, subject to the following condition:

Compliance with the submitted alternate landscape plan is required.

SECONDED: **Agnich**

AYES: 5 – Hounsel, Agnich, Slade, Sashington, Medina

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA190-112OA)

BUILDING OFFICIAL'S REPORT: Application of James Jeanes, represented by Jeff Baron, for a variance to the front yard setback regulations at 6804 Lorna Lane. This property is more fully described as Part of Lot A-1, Block A/2805, and is zoned an R-10(A) Single Family District, which requires a front yard setback of 30 feet. The applicant proposes to construct a single family residential structure and provide a 25-foot front yard setback, which will require a five-foot variance to the front yard setback regulations to the front yard regulations.

LOCATION: 6804 Lorna Lane

APPLICANT: James Jeanes, represented by Jeff Baron

REQUESTS:

A request for a variance to the front yard setback regulations of five feet has been made to demolish an existing structure and to construct and maintain a two-story single family structure with approximately 4,500 square feet of floor area, part of which is to be located 25 feet from one of the site's two front property lines on Lorna Lane or five feet into the 30-foot front yard setback on a site developed with a single family structure.

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:

- 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;

- 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
- 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 while the site is encumbered with two front yard setback requirements, the applicant had not substantiated how the variance is necessary to permit development of the subject site or how the property differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land within the same R-10(A) Single Family District.

BACKGROUND INFORMATION:

Zoning:

- Site: R-10(A) (Single family district)
- North: R-10(A) (Single family district)
- South: R-10(A) (Single family district)
- East: Conservation District No. 2
- West: R-10(A) (Single family district)

Land Use:

The subject site and surrounding properties are developed with single family uses.

Zoning/BDA History:

There have not been any board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

This request for a variance to the front yard setback requirement of five feet focuses on demolishing, constructing, and maintaining a two-story single family structure with approximately 4,500 square feet of floor area part of which is to be located 25 feet from one of the site's two front property lines on Lorna Lane or five feet into the 30-foot front yard setback on a site developed with a single family structure.

The subject site is zoned an R-10(A) Single Family District which requires a minimum front yard setback of 30 feet. The property is located at the southeast corner of Lorna Lane and Brendenwood Drive. Regardless of how the structure is proposed to be oriented to front Lorna Lane, the lot has a 30-foot front yard setback along both street frontages to maintain the continuity of the established front yard setback established by the lots to the south that front and are oriented towards Lorna Lane. There is no continuity of the established front yard setback established by the lots on Brendenwood Drive. However, staff determined that Brendenwood Drive is a front yard since this property has two frontages of unequal distance and Brendenwood Drive is the shorter frontage.

The submitted site plan indicates the proposed structure is to be located 25 from the front property line along Lorna Lane or 5 feet into this 30-foot front yard setback.

The subject site is flat, rectangular in shape, and according to the application, it is 0.24 acres (or approximately 10,500 square feet) in area. In an R-10(A) District, the minimum lot size is 10,000 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-10(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 two-story single family structure with approximately 4,500 square feet of floor area part of which is to be located 25 feet from one of the site’s two front property lines on Lorna Lane or five feet into the 30-foot front yard setback.

Timeline:

- October 1, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- October 16, 2020: The Board of Adjustment Secretary assigned this case to the Board of Adjustment Panel C.
- October 16, 2020: The Board Administrator 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 27, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the November 6, 2020 deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 29, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT ACTION: November 16, 2020

APPEARING IN FAVOR: Jeff Baron 2301 Brendenwood, Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION#1: Slade

I move that the Board of Adjustment, in Appeal No. BDA 190-112, on application of James Jeanes, represented by Jeff Baron, **grant** the five-foot 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: Medina

AYES: 2 - Slade, Medina

NAYS: 3 - Agnich, Hounsel, Sashington

MOTION FAILED: 2 – 3

MOTION#2: Sashington

I move that the Board of Adjustment, in request No. BDA 190-097 on application of Kerry Warren to construct and/or maintain a nine-foot seven-inch high fence having less than 50 percent open surface area as a special exception to fence standards regulations contained in the Dallas Development Code, as amended, is **granted**, subject to the following condition:

Compliance with the submitted site plan and elevation is required.

SECONDED: Agnich

AYES: 4 - Agnich, Hounsel, Sashington, Medina

NAYS: 1 - Slade

MOTION PASSED: 4 - 1

The meeting was adjourned at 2:21 P.M. on November 16, 2020.



CHAIRPERSON



BOARD ADMINISTRATOR



BOARD SECRETARY

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