

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
Monday, November 18, 2019**

MEMBERS PRESENT AT BRIEFING: Robert Agnich, acting chair, Judy Pollock, regular member, regular member, Roger Sashington, regular member, Phil Sahuc, alternate member and Jared Slade, alternate member

MEMBERS ABSENT FROM BRIEFING: Matt Shouse, regular member

MEMBERS PRESENT AT HEARING: Robert Agnich, acting chair, Judy Pollock, regular member, regular member, Roger Sashington, regular member, Phil Sahuc, alternate member and Jared Slade, alternate member

MEMBERS ABSENT FROM HEARING: Matt Shouse, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Sarah May, Interim Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, Elaine Hill, Board Secretary, Phil Erwin, Chief Arborist, and Neva Dean, Asst. Director

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Sarah May, Interim Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, Elaine Hill, Board Secretary, Phil Erwin, Chief Arborist, and Neva Dean, Asst. Director

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's November 18, 2019 docket.

1:06 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

Panel C, October 21, 2019 public hearing minutes were approved without a formal vote.

FILE NUMBER: BDA189-126(SL)

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin of Baldwin Associates for a special exception to the fence standards regulations at 4047 Cochran Chapel Road. This property is more fully described as Lot 5, Block 5077, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 10-foot-high fence in a required front yard, which will require a 6-foot special exception to the fence standards regulations.

LOCATION: 4047 Cochran Chapel Road

APPLICANT: Rob Baldwin of Baldwin Associates

REQUEST:

A request for a special exception to the fence standards regulations related to height of 6' is made to construct and maintain a fence/columns/gate over 4' in height (a 5' 8" - 6' high open rod fence with 6' 2" – 7' high columns, and a 10' high open rod entry gate flanked by 10' high entry columns), in the site's front yard setback on a property developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA134-101, Property at 4047 Cochran Chapel Road (the subject site)

On December 15, 2014, the Board of Adjustment Panel C granted a request for special exception to the fence regulations and imposed the following condition: compliance with the submitted revised site plan and revised elevation is required.

The case report stated the request was made to construct a 4’ 5” high wrought iron fence with 5’ 6” high stucco columns and one 6’ 5” high wrought iron swinging vehicular gate flanked by 6’ 4” high stucco and cast stone columns parallel and perpendicular to Cochran Chapel Road.

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the fence standards regulations related to height of 6’ focuses on constructing and maintaining a fence/columns/gate over 4’ in height (a 5’ 8” - 6’ high open rod fence with 6’ 2” – 7’ high columns, and a 10’ high open rod entry gate flanked by 10’ high entry columns), in the site’s 40’ front yard setback on a property developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
- The subject site is zoned R-1ac(A) which requires a 40’ front yard setback.
- The submitted revised site plan and revised elevation shows the proposal in the front yard setback over 4’ in height. These documents represent places on the site where the existing fence is to remain over 4’ in the front yard setback (a fence special exception granted by the Board in 2014) and where a proposed fence is to be constructed and maintained different from that what was granted and imposed with conditions by the Board in 2014: BDA134-101. (The applicant has stated that the differences between the 2014 and current proposal are twofold: an entry gate that has been relocated and raised in height from 6’ 5” to 10’).

- The following additional information was gleaned from the submitted revised site plan:
 - The proposal is represented as being approximately 175’ in length parallel to the street, and about 24’ perpendicular to this street on the east and west sides of the site in this front yard setback.
 - The proposal is represented as being located as close as on the front property line, and as close as approximately 14’ from the pavement line.
- The Board of Adjustment Chief Planner/Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4’ in height located in front yard setback – a fence located immediately east of the subject site - an approximately 5’ high combination open wrought iron fence with stucco base that appears to be a result of a fence special exception granted by the Board in 2014: BDA134-102 (see the “Zoning/BDA History” section of this case report for further details).
- As of November 8, 2019, no letters had been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 10’ in height) will not adversely affect neighboring property.
- Granting this special exception of 6’ with a condition imposed that the applicant complies with the submitted revised site plan and revised 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:

- August 28, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 14, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.
- October 14, 2019: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the October 30th deadline to submit additional evidence for staff to factor into their analysis; and the November 8th 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.”

November 4, 2019: The applicant’s representative submitted additional documentation to staff (see Attachment A).

November 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included the following: the Assistant Director of Sustainable Development and Construction Current Planning Division, the Assistant Director of Sustainable Development and Construction Engineering Division, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Interim Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, Sustainable Development and Construction Department Board of Adjustment Senior Planners, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: November 18, 2019

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 189-126, application of Rob Baldwin of Baldwin and Associates, **grant** a special exception to fence height regulations requested by this applicant because our evaluation of the property and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code.

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

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

SECOND: Agnich

AYES: 5 – Agnich, Pollock, Sashington, Sahuc, Slade

NAYS: 0
MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-127(SL)

BUILDING OFFICIAL’S REPORT: Application of Darla Lamas for special exceptions for the handicapped to the fence standards and visual obstruction regulations at 2434 Marjorie Avenue. This property is more fully described as Lot 2 & 3, Block E/5151, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet, requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line, requires a 20 foot visibility triangle at driveway approaches and alleys, and a 45 foot visibility triangle at street intersections. The applicant proposes to construct and/or maintain a 6 foot high fence in a required front yard, which will require a 2 foot special exception for the handicapped to the fence standards regulations, to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception for the handicapped to the fence standards regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions for the handicapped to the visual obstruction regulations.

LOCATION: 2434 Marjorie Avenue

APPLICANT: Darla Lamas

REQUESTS:

The following requests for special exceptions for the handicapped have been made on a site developed with a single-family home:

1. to the fence standards regulations related to height of 2’ is made to maintain a 6’ high solid wood fence located in the site’s front yard setback on Garrison Street;
2. to the fence standards regulations related to related to fence panels with a surface area that is less than 50 percent open less than 5’ from the front lot lines is made to maintain the aforementioned 6’ high solid wood fence located on the Garrison Street front lot line;
3. to the visual obstruction regulations to maintain the solid wood fence located in the two 20’ visibility triangles on either side of the driveway into the property from Garrison Street, and located in the 20’ visibility triangle at where the alley meets Garrison Street;
4. to the visual obstruction regulations to maintain the aforementioned 6’ high solid wood fence and a 4’ high open metal fence located in the 45’ visibility triangle at the intersection of Marjorie Avenue and Garrison Street.

STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED: Section 51A-1.107. (b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is

necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

STAFF RECOMMENDATION:

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

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 area to the north, east, west and south are developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The requests for special exceptions for the handicapped to the fence standards and visual obstruction regulations focus on maintaining the following fences on the site that is developed with a single-family home:
 - a 6’ high solid wood fence located:
 1. in the site’s Garrison Street front yard setback,
 2. on this front lot line,
 3. in the two 20’ visibility triangles on either side of the driveway into the site from Garrison Street
 4. in the 20’ visibility triangle at where the alley meets Garrison Street, and
 5. in the 45’ visibility triangle at the intersection of Marjorie Avenue and Garrison Street. (2’ over the maximum height allowed for a fence located in the front yard setback and a solid fence located less than 5’ from the front lot line);
 - a 4’ high open metal fence located in the 45’ visibility triangle at the intersection of Marjorie Avenue and Garrison Street

- The property is 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 Marjorie Avenue and Garrison Street. The subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along Marjorie 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 Garrison Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a fence can reach 9' in height. However, the site's Garrison Street 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 lots to the south that front/are oriented eastward towards Garrison Street.
- The submitted site plan/elevation represents a 6' solid wood fence along Garrison Street that is noncompliant to fence and visual obstruction regulations in that it exceeds the maximum height allowed for a fence in the front yard setback of 4', that it is a solid fence located less than 5' from the front lot line, that is located in four visibility triangles on this street (20' visibility triangles on either side of the driveway, and where the alley meets Garrison Street, and in the 45' visibility triangle at the intersection of Garrison Street intersects with Marjorie Avenue).
- The site plan/elevation represents a 4' high open metal fence that is noncompliant with visual obstruction regulation in that it is in the 45' visibility triangle at where Marjorie Avenue intersects with Garrison Street.
- While the submitted site plan/elevation represents the single-family home on the site is in the 25' front yard setback, no variance (or special exception for the handicapped to the front yard setback regulations) has been made given that the Building Inspection Senior Plans Examiner/Development Code Specialist has recognized this structure (according to DCAD, built in 1935) as a nonconforming structure.
- 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.
- Unlike most requests where applications are made for the board to consider fences that exceed the maximum heights and with panels less than 50 percent open less than 5' from the front lot line, and items located in visibility triangles (each with a particular standard that pertains to fence standards and visual obstruction regulations), the board is to consider these special exceptions for the handicapped request solely on whether they conclude that these special exceptions are necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

- Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.
- A copy of the “handicap” definition from this act was provided to the Board Administrator by the City Attorney’s Office. Section 3602 of this act states the following:
 - “(h) “Handicap” means, with respect to a person -
 1. a physical or mental impairment which substantially limits one or more of such person’s major life activities,
 2. a record of having such an impairment, or
 3. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”
- Unlike most requests where applications are made for the board to consider fences that exceed the maximum heights and with panels less than 50 percent open less than 5’ from the front lot line, and items located in visibility triangles (each with a particular standard that pertains to fence standards and visual obstruction regulations), the board is to consider these special exceptions for the handicapped request solely on whether they conclude that these special exceptions are necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.
- The applicant has the burden of proof in establishing the following:
 - The special exception (which in this case is requested to maintain a carport in the front yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and
 - there is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- If the Board were to grant any or all of these requests and impose conditions that compliance with the submitted site plan/elevation is required, and that the special exceptions expire when a handicapped person no longer resides on the property, the fences could be maintained in the location shown on the submitted site plan/elevation for as long as the applicant or any other handicapped person resides on the site.

Timeline:

- August 29, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 14, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- October 14, 2019: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the October 30th deadline to submit additional evidence for staff to factor into their analysis; and the November 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - a copy of the "handicap" definition from the Federal Fair Housing Amendments Act of 1988; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included the following: the Assistant Director of Sustainable Development and Construction Current Planning Division, the Assistant Director of Sustainable Development and Construction Engineering Division, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Interim Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, Sustainable Development and Construction Department Board of Adjustment Senior Planners, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: November 18, 2019

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 189-127, application of Darla Lamas, **grant** special exceptions for the handicapped to construct and/or maintain a six-foot high fence and for special exception for the handicapped to the visual obstruction regulation requested by this applicant because our evaluation of the property and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code.

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

1. Compliance with the submitted site plan/elevation is required.
2. The special exceptions expire when a handicapped person no longer resides on the property.

SECOND: Sahuc

AYES: 5 – Agnich, Pollock, Sashington, Sahuc, Slade

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-130(SL)

BUILDING OFFICIAL’S REPORT: Application of CPUS Mockingbird LP, represented by Lori Martin, for a special exception to the landscape regulations at 5307 E. Mockingbird Lane. This property is more fully described as Lot 3, Block 1/5185, and is zoned MU-3, which requires mandatory landscaping. The applicant proposes to construct a and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 5307 E. Mockingbird Lane

APPLICANT: Lori Martin

REQUEST:

A request for a special exception to the landscape regulations is made to maintain a site developed with a mixed-use development (Mockingbird Station), and not fully meet the landscape regulations, more specifically, the street and parking lot tree requirements on the subject 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; and
- 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 City of Dallas Chief Arborist recommends approval of the request concluding that strict compliance with the requirements of Article X will unreasonably burden the use of the property (fully meeting tree requirements conflict with pedestrian safety and structures on the site), and that the special exception will not have a negative effect on neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed use)
North: PD 296 (Planned Development)
South: PD 740 (Planned Development)
East: R-7.5(A) (Single family residential, 7,500 square feet)
West: City of University Park

Land Use:

The subject site is developed with a mixed-use development (Mockingbird Station). The areas to the north and south are developed with retail uses; the area to the east is developed with a DART rail station; and the area to the west is the City of University Park.

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 landscape regulations focuses on maintaining a site developed with a mixed-use development (Mockingbird Station),

and not fully meeting the landscape regulations, more specifically, the street and parking lot tree requirements on the subject 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.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A).
- The Chief Arborist's memo states the following with regard to "request":
 - The applicant is requesting a special exception to the landscaping regulations of Article X. Specifically, the applicant seeks approval for a reduction in the required number of street trees, and in the placement of parking lot trees required under the 1994 amendments to the Article X ordinance.
- The Chief Arborist's memo states the following with regard to "provision":
 - The property was developed under the 1994 provisions of the Article X landscaping regulations. The site was inspected and completed through phases of construction. The site was found non-compliant within the past year during an arborist site review.
 - The property retains and exceeds the required number of site tree credits and provides design standards for screening of off-street parking and foundation planting.
 - The established and well-maintained landscaping has matured since completion and has been modified to meet site restrictions, minor site alterations, and public safety concerns. Some trees have been removed and replaced with alternative plants.
 - The trail bridge construction had minimal impact to the site design on the property.
- The Chief Arborist's memo states the following with regard to "deficiencies":
 - The total street frontage requires 26 street trees. Twenty-two large trees remain while small trees also provide landscape buffering along the frontage road.
 - The parking lot trees in the central drive parking area were removed to address pedestrian safety concerns and structural conflicts with the landscape areas. Small trees and other suitable plant materials were placed in the locations to maintain an appropriate landscape for the customers.
 - Three additional large trees along the north façade of the main structure were removed under permit due to irreparable damages and an alternative plant material was placed in the location to avoid future pruning damages.
- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because strict compliance with the Article X regulations will unreasonably burden the use of the property, and that the special exception not have a negative effect on neighboring properties.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and

the special exception will not adversely affect neighboring property.

- 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 exception from fully providing the street and parking lot tree requirements on the subject site.

Timeline:

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

October 14, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 14, 2019: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the October 30th deadline to submit additional evidence for staff to factor into their analysis; and the November 8th 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.

November 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included the following: the Assistant Director of Sustainable Development and Construction Current Planning Division, the Assistant Director of Sustainable Development and Construction Engineering Division, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Interim Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, Sustainable Development and Construction Department Board of Adjustment Senior Planners, and the Assistant City Attorney to the Board.

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

November 7, 2019: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: November 18, 2019

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 189-130, application of CPUS Mockingbird LP, represented by Lori Martin **grant** a special exception to the landscape regulations requested by this applicant because our evaluation of the property and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code.

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

- Compliance with the submitted alternate landscape plan is required.

SECOND: Sahuc

AYES: 5 – Agnich, Pollock, Sashington, Sahuc, Slade

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-122(SL)

BUILDING OFFICIAL’S REPORT: Application of Danny Sipes for a variance to the front yard setback regulations at 2212 Worthington Street. This property is more fully described as Lot 12H, Block H/573, and is zoned PD 225 (Interior Neighborhood), which requires a front yard setback of 8 feet. The applicant proposes to construct and/or maintain a structure and provide a 7-foot 3-inch front yard setback, which will require a 9 inch variance to the front yard setback regulations.

LOCATION: 2212 Worthington Street

APPLICANT: Danny Sipes

REQUEST:

A request for a variance to the front yard setback regulations of 9” is made to maintain a single-family home structure located 7’ 3” from the site’s front property line or 9” into the 8’ 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:

- (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:

- (D) Staff concluded that while granting this variance request for one floor of a four-story townhome to encroach 9” into an 8’ front yard setback would not appear to be contrary to public interest, the request should be denied because the applicant had not provided documentation to the other components of the variance standard:
 - 1. how the variance was necessary to permit development of this parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope (in this case, the subject site is flat, rectangular in shape, and is, according to the application, 0.036 acres or approximately 1,600 square feet in area), that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same PD 225 zoning district (the applicant provided no information related to this); and
 - 2. how granting this request would not be to relieve a self-created or personal hardship, nor for financial reasons only.

BACKGROUND INFORMATION:

Zoning:

- Site: PD 225 (Interior Neighborhood) (Planned Development)
- North: PD 225 (Interior Neighborhood) (Planned Development)
- South: PD 225 (Interior Neighborhood) (Planned Development)
- East: PD 225 (Interior Neighborhood) (SUP 835) (Planned Development, Specific Use Permit)
- West: PD 225 (Interior Neighborhood) (Planned Development)

Land Use:

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

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 9” focuses on maintaining a single family home structure located 7’ 3” from the site’s front property line or 9” into the 8’ front yard setback, more specifically, maintaining a portion of the third floor of the 4-story approximately 5,800 square foot townhome that is located 9” into the required 8 foot front yard setback.
- The property is in PD 225 (Interior Neighborhood) zoning district which states the following: All structures must have a minimum setback of eight feet. Trellises, screens, awnings, and canopies may intrude into the required minimum front yard up to five feet.
- The submitted site plan represents a structure located 10.1’ from the front property line.
- A document labeled “site guide” (Attachment A) denotes the “third floor plan” and “wall encroaches 8-foot building line”. The Building Inspection Senior Plans Examiner/Development Code Specialist states that this document represents that a wall on the third floor encroaches into the 8’ front yard setback by 9 inches.
- According to DCAD records the “main improvement” listed for property addressed at 2212 Worthington Street is a structure built in 2018 with 4,640 square feet of living area/total area, and with the following “additional improvements”: a 420 square foot attached garage, a 250 square foot enclosed patio, and a 510 square foot deck.
- The subject site is flat, rectangular, and is, according to the application, 0.036 acres (or approximately 1,600 square feet) in area. The site is PD 225 (Interior Neighborhood). PD 225 states that there are no lot size requirements in the Interior Neighborhood District.
- 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 PD 225 (Interior Neighborhood) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing

this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 225 (Interior Neighborhood) zoning classification.

- If the Board were to grant the variance request, and impose the submitted site plan and “site guide” document as a condition, the structure in the front yard setback would be limited to what is shown on these documents which in this case is a portion of the third floor a 4-story townhome that is located 9” into the required 8’ front yard setback.

Timeline:

August 12, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 14, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 14, 2019: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the October 30th deadline to submit additional evidence for staff to factor into their analysis; and the November 8th 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 22, 2019: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a document to the Board of Adjustment Chief Planner/Board Administrator from the applicant (see Attachment A).

November 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included the following: the Assistant Director of Sustainable Development and Construction Current Planning Division, the Assistant Director of Sustainable Development and Construction Engineering Division, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Interim Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, Sustainable Development and Construction

Department Board of Adjustment Senior Planners, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: November 18, 2019

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 189-122, application of Danny Sipes, **deny** the variance to the front yard setback regulations requested by this applicant without prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

SECOND: Sahuc

AYES: 5 – Agnich, Pollock, Sashington, Sahuc, Slade

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

The meeting was adjourned at 1:30 p.m. on November 18, 2019.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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