

ZONING BOARD OF ADJUSTMENT, PANEL C  
MONDAY, SEPTEMBER 16, 2019  
AGENDA

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BRIEFING	5ES 1500 MARILLA STREET DALLAS CITY HALL	11:00 A.M.
PUBLIC HEARING	COUNCIL CHAMBERS 1500 MARILLA STREET DALLAS CITY HALL	1:00 P.M.

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**Neva Dean, Assistant Director**  
**Steve Long, Board Administrator/ Chief Planner**

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**PUBLIC TESTIMONY**

Minutes  
Rules of Procedure Amendment

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**MISCELLANEOUS ITEMS**

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Approval of the August 19, 2019 Board of Adjustment Panel C Public Hearing Minutes	M1
Approval of amendments to the Board of Adjustment Working Rules of Procedure pursuant to changes in state law	M2

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**UNCONTESTED CASE**

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<b>BDA189-091(SL)</b> 9216 Lynbrook Drive	1
<b>REQUEST:</b> Application of Michael Short for a variance to the front yard setback regulations, and for special exceptions to the fence standards regulations	

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**REGULAR CASES**

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<b>BDA189-092(SL)</b>	308 N. Bishop Avenue <b>REQUEST:</b> Application of Rob Baldwin of Baldwin Associates for a variance to the landscape regulations	2
<b>BDA189-094(SL)</b>	5451 McCommas Boulevard <b>REQUEST:</b> Application of Jeffrey W. Crosson II for special exceptions to the visual obstruction regulations	3
<b>BDA189-099(SL)</b>	4554 Harrys Lane <b>REQUEST:</b> Application of Dallas Cothrum of Masterplan for a special exception to the fence standards regulations	4

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## EXECUTIVE SESSION NOTICE

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex Govt. Code §551.087]
7. deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementations of security personnel, critical infrastructure, or security devices. [Tex. Govt. Code §551.089]

**MISCELLANEOUS ITEM 2**

In August of 2019, the Assistant City Attorney briefed the Board on recent state legislation affecting the Board of Adjustment. Attached are amendments to the Board of Adjustment Working Rules of Procedure pursuant to this legislation (see Attachment A).

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pg 1

**CITY OF DALLAS BOARD OF ADJUSTMENT**  
**WORKING RULES OF PROCEDURE**

**SEPTEMBER 2019**

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## CITY OF DALLAS BOARD OF ADJUSTMENT

### RULES OF PROCEDURE

#### Section 1. Powers of the Board.

- (a) The powers of the board of adjustment, referred to as the board conferred upon it in Section 7, Chapter 282, Page 424, 40th Legislature, Acts 1927, and as thereafter amended, being codified in Chapter 211 of the Local Government Code, and in Sections 51A-3.102 and 51A-4.704 of the Dallas Development Code, as amended, include, but are not limited to, the following:
  - (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any order or ordinance pertaining to zoning.
  - (2) To hear and decide special exceptions to the terms of the zoning ordinance in the manner provided.
  - (3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice done.
  - (4) To regulate and discontinue nonconforming uses and structures.
- (b) In exercising its powers, the board and panels of the board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from and may make an order, requirement, decision, or determination as ought to be made, and to that end the board and panels of the board shall have all the powers of the officer from whom an appeal is taken.

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Section 2. Composition of the Board.

- (a) The board shall consist of fifteen members and six alternates appointed by the city council for a term of two years. All members shall be removable for cause by the city council upon written charges and after a public hearing.
- (b) The officers of the board shall consist of a chair, two vice-chairs, a board administrator, a secretary, and any other officers the board may elect or the chair may appoint. The board administrator and secretary shall have no voting rights.
- (c) The board shall be divided into three panels of five members. A board member may serve only on the panel to which the member is assigned.
- (d) The board and panels of the board shall be provided the staff employees necessary to conduct its proceedings, as provided by the budget. The services of an accountant and abstract research company may be retained as needed for the preparation of compliance cases.

Section 3. Duties of the Chair.

- (a) The chair shall appoint a panel vice chair for each of the three panels of the board.
- (b) The chair shall preside over all meetings of the entire board.
- (c) The chair shall compel the attendance of witnesses when necessary.
- (d) The chair shall approve a rotational schedule for attendance of alternate members at panel meetings.

Section 4. Duties of the Presiding Officers.

- (a) The chair and vice-chairs shall act as presiding officers of the panels. The duties of the presiding officers of a panel are to preside at all meetings of the panel to which they are assigned, to maintain order at all times, to administer oaths, and to rule on all points of procedure, and to dispense the business of the panel in a just and orderly manner. The presiding officer may impose a reasonable time limit for speakers in

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order to dispense the business of the board or panel in a just and orderly manner.

- (b) The presiding officer shall question all witnesses and/or staff, and request other members of the panel to ask any questions which may assist the board and panels of the board in arriving at a just and fair decision.
- (c) The presiding officer shall sign the minutes of the panel meetings over which he or she presides and each case decided upon in accordance with the decision of the panel.
- (d) In the absence of the presiding officer, the panel vice-chair shall preside and fulfill all of the duties of the presiding officer. In the absence of the presiding officer and panel vice-chair, the panel shall elect a temporary chair. This election does not survive the meeting in which it is had.

Section 5. Duties of the Board Administrator.

\* For purposes of this section, reference to the board includes panels of the board.

- (a) The board administrator shall:
  - (1) receive all complete applications to the board for processing;
  - (2) receive all evidence submitted for the board's review;
  - (3) provide technical assistance to the board;
  - (4) assist the general public with information, procedures, policies, case status, and site plans;
  - (5) gather needed information from outside sources and confer with all sections and departments of the city for case analysis;
  - (6) provide research on cases;
  - (7) prepare board documents, dockets, notices, and advertisements, and write necessary letters to the property owners;

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PS 4

- (8) direct, conduct, and supervise all administrative functions of the board operation as may be deemed necessary;
  - (9) coordinate the work of the board;
  - (10) serve as liaison between the board and the city plan commission, city manager, and various other officers of the City of Dallas, including, but not limited to, the building official, the director of transportation, the city attorney, and the director of planning; and
  - (11) investigate complaints made by citizens by reason of any ruling or decision of the board or of an administrative official.
- (b) The board administrator shall also administer oaths and compel the attendance of witnesses when requested by the chair or other presiding officers to do so.

Section 6. Duties of the Secretary.

- (a) The secretary shall be generally responsible for the clerical work of the board and panels of the board, under the direction and supervision of the board administrator. The secretary shall:
- (1) keep the minutes of all meetings and proceedings in a substantially bound book showing the vote and motion of each member upon each question, or if absent, or failing to vote, indicating that fact, and attesting the minutes;
  - (2) compile the required records, log appeals and applications to the board, prepare case folders, type notices and envelopes, prepare route sheets, log favor and opposition letters, prepare certified mail to applicants, type letters and memoranda; and
  - (3) call board and panel members for meetings, maintain index files, number each case, and furnish each member of the board and each member of panel of the board with a copy of each petition, together with the building official's refusal.

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Section 7. Alternate Members.

- (a) In the absence of one or more regular members, alternate members shall attend panel meetings when requested to do so by the board chair, the presiding officer of a board panel, or by the city manager. The presiding officer of a panel may dismiss an alternate member when attendance is not necessary to complete a five-member panel.
- (b) The alternate members are subject to the same attendance and general rules as all other board members.
- (c) Alternate members who are not on the panel scheduled to attend will be called to serve only when one or more regular members are absent from the meeting.

Section 8. Attendance and General Rules.

- (a) The board shall be governed by the rules of procedure and decorum for city boards and commissions contained in Chapter 8 of the Dallas City Code, as amended, and applicable provisions of the City Charter.
- (b) No member may be excused from attendance at a board or panel meeting, except for medical reasons certified to by his physician or unless excused by the board and the city council. A member shall forfeit his office if he misses more than three regular meetings in succession, unless excused by the board and the city council.

Section 9. Requests for Board Action.

- (a) All requests to the board must be made on the prescribed form. The facts alleged must be attested to by a notary public.
- (b) The fee as provided by ordinance must accompany each request to defray the cost of advertising the public hearing.
- (c) The board or panel of the board may waive the filing fee if the board or panel of the board finds that payment of the fee would result in substantial financial hardship to the applicant. The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's or

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panel's miscellaneous docket for predetermination. If the issue is placed on the miscellaneous docket for predetermination, the applicant may not file the application until the merits of the request for waiver have been determined by the board or panel of the board.

- (d) Evidence submitted for the board's consideration on a request must be submitted to the board administrator or the board secretary. Evidence submitted is part of the public record and will not be returned. The board and panels are quasi-judicial bodies; therefore, no evidence may be submitted to and no contact may be made with individual members regarding a pending request. All communications, oral or written, should be directed to the board administrator. Failure to comply with this rule may result in criminal prosecution for improper influence, which is a Class A misdemeanor under Texas Penal Code Section 36.04.
- (e) Unless expressly authorized by the concurring vote of 75 percent of the members of a panel when an extreme hardship is shown, no request may be heard at a regular panel meeting until the expiration of 21 days after it is filed with the building official.
- (f) The director shall schedule cases within a reasonable time from the receipt of a complete application.
- (g) An item may be placed on a board's or panel's agenda by the director or a member of that board or panel.
- (h) The director may authorize the withdrawal of all applications except those to establish a compliance date, which must be authorized by the panel assigned the case. No request for withdrawal of an application may be considered by the director or a panel unless it is in writing. A request to the director for withdrawal must be received before 5:00 p.m. of the day that will leave five full working days (excluding Saturdays, Sundays, and official city holidays) before the date of the hearing. A request for withdrawal must be received in sufficient time to notify all interested parties before the hearing date. If the director or the panel finds in the consideration of such a request that there is an objection to the withdrawal and that allowing the withdrawal over the objection will unduly prejudice the objector, the director or panel shall deny the request. If the director denies a request for withdrawal, the applicant

may appeal the withdrawal request to the panel assigned the case provided the appeal satisfies all of the requirements of this subsection for an application for withdrawal.

- (i) The director may authorize the amendment of all applications, except those to establish a compliance date and appeals from the decision of an administrative official, which must be authorized by the panel to which the case is assigned. A request to the director for an amendment must be received before 5:00 p.m. of the day that will leave five full working days (excluding Saturdays, Sundays, and official city holidays) before the date of the hearing. If the director or panel finds in the consideration of such a request that there is an objection to the amendment, and that allowing the amendment over the objection will unduly prejudice the objector, the director or panel shall deny the request. If the director denies a request for amendment, the applicant may appeal to the panel assigned the case. If an amendment is authorized which requires newspaper advertisement and/or written notice to surrounding property owners, the amendment constitutes a new application and the requesting party must pay an additional filing fee to defray the cost of re-advertising.
- (j) A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property. The person requesting the time extension shall have the burden of establishing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the panel extend the time period beyond 18 months from the date of its favorable action.
- (k) Only one panel may hear, handle, or render a decision in a particular case. If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action. If a case is dismissed or withdrawn and subsequently re-filed, it must be returned to the panel to which it was originally assigned. If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.

- (l) If the time for reconsideration of a case has expired, the board or panel of the board may not change or modify its decision unless a new application is filed or the board or panel of the board authorizes a public hearing to review the case.

Section 10. Public Testimony and Public Hearings.

- (a) All meetings of the board and panels of the board are open to the public and must be held at a time and place determined by the board.
- (b) The chair shall have the authority to call special meetings of the board. The presiding officer of a panel acts as the panel's chair pursuant to Section 8-3 of the Dallas City Code, and shall have the authority to call special meetings of that panel. The officer calling a special meeting shall designate the time and the place of the meeting. Special meetings must be called by the chair at the request of at least one-third of the board.
- (c) The board secretary shall notify all affected members of the date, time, and place of either a regular or special meeting.
- (d) No regular or special meeting may be held unless 75 percent of the panel members, either regular or alternate, are in attendance.
- (e) Any interested party may appear in person or by agent or attorney at the public hearing.
- (f) Members of the public may speak at regular and special meetings of the board regarding any item on the board's posted agenda before or during the board's consideration of the item (e.g. minutes, appeals, compliance cases). Each speaker will have a maximum of three minutes to speak unless the time is shortened or extended by a majority vote of the board. Any member of the public requiring the use of a translator to relay public comments shall be afforded twice the amount of time as a member of the public who does not require a translator.
- (g) After a case is called, the applicant shall state his case, anyone in favor shall be heard next, then anyone in opposition shall be heard [next], and the applicant shall have the opportunity to make a reply.

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- (h[g]) If a case is called for hearing in due order on the docket and the applicant or anyone in his behalf does not appear, the panel may continue the case to the following hearing at which time it will be called again. The panel may also approve a case or deny a case for lack of appearance at the first call at its discretion. If no one appears the second time, the case must be denied.
- (i[h]) If, after a public hearing on a request, the presiding officer duly calls for, but does not receive a motion, the request is deemed denied with prejudice.
- (j[i]) A public hearing must be conducted for compliance proceedings on a nonconforming use. Prior to the hearing, the presiding officer may direct that a subpoena duces tecum and interrogatories be served on the owner(s) and/or operators of the use requesting that certain information and documents be produced to the board administrator within a reasonable time. The owner(s) and/or operators may supply the board administrator with any additional information or documents that are necessary for the panel to make its decision. At the hearing, the panel shall review the information and documents and set a date by which the nonconforming use must come into compliance with the current zoning regulations.
- (k[j]) The board administrator may place cases which are recommended for approval without opposition on an uncontested docket. When the board administrator calls the uncontested docket, he shall state the case number, the applicant, the location, the nature of the case and the staff recommendation, and shall ask if there is anyone in favor or opposition. A case on the uncontested docket must be considered individually as a regular docket item if there is any opposition or a panel member so requests. Any cases remaining on the uncontested docket shall be approved as a group without the need for testimony from the applicants.
- (l[k]) Documentary evidence.
- (1) All typewritten documentary evidence including reduced-size copies of conceptual plans, development plans, landscape plans, and site plans must conform to the standard 8.5 x 11-inch letter-

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sized pages on a size 12 font or larger. Each page must be serially numbered and double-spaced.

- (2) All printed and typewritten documentary evidence in excess of five pages tendered by a party shall not be considered by the board unless such documentary evidence is submitted to the board administrator no later than 10 days prior to the scheduled hearing date at which the matter is to be considered. Upon oral request made by the party at the scheduled hearing, a panel of the board may, for good cause, suspend the operation of this rule and consider the excluded evidence or postpone the hearing on the application to a date certain to allow the panel sufficient time to consider the tendered evidence prior to the next scheduled hearing date.
- (3) For purposes of this subsection, DOCUMENTARY EVIDENCE means anything printed or written on paper and relied upon to record or prove something, but signed petitions shall not be considered documentary evidence.
- (4) For purposes of this subsection, PARTY means the applicant or any person or entity that appears in favor of or against the request.

Section 11. Executive Sessions.

- (a) The board or a panel may remove itself from an open meeting by moving to go into an executive session. Only matters authorized under the Texas Open Meetings Act to be discussed in executive session may be addressed in the executive session. All communication in an executive session is privileged information. The privilege can only be waived by a member by formal waiver. Members are cautioned that discussing the privileged communication with a member of the public, the media, or any other person not privy to the executive session may damage the privilege. The board or a panel shall not hold an executive session except when discussing complaints about or evaluations of individual staff members, or seeking the advice of its attorney on the following matters:

- (1) Pending or contemplated litigation.

- (2) Settlement offers.
  - (3) Risk or liability of the board, a panel or individual members thereof for taking an action.
  - (4) Any matter where the duty of the board's counsel to his client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, conflicts with the Open Meetings Law.
- (b) A motion to go into an executive session must be seconded and requires a majority vote. If the motion passes, the board or panel shall follow the following procedure:
- (1) The presiding officer shall announce that the board or panel is going into an executive session, stating the category under the Texas Open Meetings Act that permits the executive session.
  - (2) The presiding officer shall announce the time.
  - (3) Members shall move quickly to the location of the executive session with no discussion among themselves or with members of the public or media.
  - (4) The executive session must be tape recorded.
  - (5) At the end of the executive session, members shall return quickly to the meeting room with no discussion among themselves or with members of the public or media.
  - (6) The presiding officer shall announce the time when the board or panel resumes the open meeting.

Section 12. Decisions of a Panel.

- (a) No action of a panel sets a precedent. Each case must be decided upon its own merits and upon the circumstances of the case.
- (b) The concurring vote of 75 percent of the members of a panel is necessary to reverse any decision of an administrative official, or to

decide in favor of an applicant on any matter which the board is required to pass under a zoning ordinance. If such an application does not receive the concurring vote of 75 percent of the members of a panel, the case is construed as denied with prejudice.

- (c) A decision of a panel may be reconsidered only by the same makeup of the panel that made the decision. The motion to reconsider may be made only on the same day the vote was taken, and only by a member who voted with the prevailing side.
- (d) Once a decision of a panel is appealed to district court, it may not be reconsidered or rescinded, unless the case is remanded by the district court.
- (e) The decisions and official records of the board and panels are public records.

Section 13. Two-Year Limitation.

- (a) Except as provided in Subsections (b) and (c), after a final decision is reached by a panel, no further applications may be considered on the matter decided for that property for two years from the date of the final decision.
- (b) If a panel renders a final decision of denial without prejudice, the two-year limitation is waived.
- (c) A property owner may apply for a waiver of the two-year limitation in the following manner:
  - (1) The applicant shall submit his request in writing to the board administrator. The board administrator shall inform the applicant of the date on which his request shall be considered and shall advise the applicant of his right to appear before the panel to which the matter has been assigned.
  - (2) A panel may waive the time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote is required to grant the request.

If a rehearing is granted, the applicant shall follow the appeal procedure.

Section 14. Amendments to Rules of Procedure.

These rules may be amended by a simple majority vote of the members present at a meeting of the entire board, or at separate meetings of all three panels. Amendments approved by panels sitting separately shall not become effective until they are approved by the third panel.

**FILE NUMBER:** BDA189-091(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Michael Short for a variance to the front yard setback regulations, and for special exceptions to the fence standards regulations, at 9216 Lynbrook Drive. This property is more fully described as Lot 26, Block H/7317, and is zoned R-7.5(A), which requires a front yard setback of 25 feet, limits the height of a fence in the front yard to 4 feet, and 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. The applicant proposes to construct and/or maintain a structure and provide a 5 foot front yard setback, which will require a 20 foot variance to the front yard setback regulations, to construct and/or maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards regulations, and to construct and/or maintain a fence 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 to the fence standards regulations.

**LOCATION:** 9216 Lynbrook Drive

**APPLICANT:** Michael Short

**REQUESTS:**

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

1. A request for a variance to the front yard setback regulations of up to 20' is made to construct and maintain an approximately 575 square foot pool "structure" to be located as close as 5' from one of the site's two front property lines (Lorwood Drive) or as much a 20' into this 25' front yard setback.
2. Requests for special exceptions to the fence standards regulations are made to construct and maintain an 8' high solid wood fence in one of the site's two 25' front yard setbacks (Lorwood Drive) – a fence that exceeds the maximum height of 4' if located in a required front yard setback, and a fence with fence panels with a surface area that is less than 50 percent open less than 5' from the Lorwood Drive front lot line.

Note that while this site has two front yard setbacks on Lynbrook Drive and Lorwood Drive, the requests made in this application are only for an encroachment and fence in the site's Lorwood Drive 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.

**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 (variance):**

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 width of the subject site that is approximately 80' on the east and 90' on the west has 50' – 60' of developable width available once a 25' front yard setback is accounted for on the north and a 5' side yard setback is accounted for on the south. If the lot were more typical to others in the zoning district with only one front yard setback, the site would have 70' – 80' of developable width.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that the living area square footage of the home on the subject site at approximately 3,400 square feet is commensurate (or less than) to 15 other homes in the same R-7.5(A) zoning district that have average living area square footage of approximately 4,300 square feet.
- Staff concluded that granting the variance in this application would not be contrary to public interest in that the variance would only allow a pool structure in one of the site's two front yard setbacks where the location of this "structure" would comply with the required 5' side yard setback if the Lorwood Drive/longer street frontage on this corner lot were able to be recognized at it functions as a side yard.

**STAFF RECOMMENDATION (fence standards regulations):**

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: R-7.5(A) (Single family district 7,500 square-feet)  
North: R-7.5(A) (Single family district 7,500 square-feet)  
South: R-7.5(A) (Single family district 7,500 square-feet)  
East: R-7.5(A) (Single family district 7,500 square-feet)  
West: R-7.5(A) (Single family district 7,500 square-feet)

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS /STAFF ANALYSIS:**

- The request for variance to the front yard setback regulations of up to 20' focuses on constructing and maintaining an approximately 575 square foot pool "structure" to be located as close as 5' from one of the site's two front property lines (Lorwood Drive) or as much a 20' into this 25' front yard setback on a site developed with a single family home with a building footprint of approximately 3,200 square feet.
- 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 southeast corner of Lynbrook Drive and Lorwood Drive. Regardless of how the structure is oriented to front Lynbrook Drive, the subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along Lynbrook Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25' front yard setback along Lorwood 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. However, the site's Lorwood Drive 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 east that front/are oriented north towards Lorwood Drive.

- The submitted site plan indicates a “proposed pool” structure located as close as 5’ from the Lorwood Drive front property line or as much as 20’ into this 25’ front yard setback.
- According to DCAD records there are no improvements listed for property addressed at 9216 Lynbrook Drive.
- The subject site is flat, slightly irregular in shape, and, according to the application, is 0.296 acres (or approximately 12,900 square feet) in area.
- The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area that have one 25’ front yard setback, two 5’ side yard setbacks, and one 5’ rear yard setback. The site has two 25’ front yard setbacks, two 5’ side yard setbacks, and no rear yard setback.
- The site plan represents that most of the pool “structure” is located in the 25’ Lorwood front yard setback.
- The width of the subject site that is approximately 80’ on the east and 90’ on the west has 50’ – 60’ of developable width available once a 25’ front yard setback is accounted for on the north and a 5’ side yard setback is accounted for on the south. If the lot were more typical to others in the zoning district with only one front yard setback, the site would have 70’ – 80’ of developable width.
- No variance would be necessary if the Lorwood Drive frontage were a side yard since the site plan represents that the proposed pool structure is 5’ from the Lorwood Drive property line and the side yard setback for properties zoned R-7.5(A) is 5’.
- The applicant has submitted a document indicating that the average of living area square footage of 15 other homes in R-7.5(A) is approximately 4,300 square feet. The document represents that the living area square footage on the site is approximately 3,400 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 pool structure that would be located as close as 5’ from the site’s Lorwood Drive front property line (or as much as 20’ into this 25’ front yard setback).

## **GENERAL FACTS/STAFF ANALYSIS (fence standards special exceptions):**

- The requests for special exceptions to the fence standards regulations focus on constructing/maintaining an 8' solid wood fence in one of the site's two 25' front yard setbacks (Lorwood Drive) – a fence that exceeds the maximum height of 4' if located in a required front yard setback, and a fence with fence panels with a surface area that is less than 50 percent open less than 5' from the Lorwood Drive front lot line on a site 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 Dallas Development Code states that no fence panel having less than 50 percent open surface area may be located less than five feet from the front lot line.
- The subject site is located at the southeast corner of Lynbrook Drive and Lorwood Drive. Regardless of how the structure is oriented to front Lynbrook Drive, the subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along Lynbrook Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25' front yard setback along Lorwood 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. However, the site's Lorwood Drive 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 east that front/are oriented north towards Lorwood Drive.
- The applicant has submitted a site plan and elevation of the proposal. The site plan and elevation represent a fence that is over 4' in height (an 8' solid wood fence) in the Lorwood Drive front yard setback and on this front lot line.
- The following additional information was gleaned from the submitted site plan:
  - the proposal is represented as being approximately 110' in length parallel to Lorwood Drive and approximately 25' perpendicular to this street on the sides in this required front yard, located on the front property line or approximately 12' from the pavement line.
- The Board of Adjustment Chief Planner/Board Administrator conducted a field visit of the site and the surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of September 6, 2019, a petition had been submitted with 14 signatures in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height (an 8' solid wood fence in the Lorwood Drive front yard setback) and related to a fence with panels with surface areas less than 50 percent open less than 5' from this front lot line will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the Lorwood Drive front yard setback and with fence panels with surface areas less than 50 percent open located less than 5' from this front lot

line to be constructed and maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

May 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.

August 12, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 12, 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 August 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> 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.”

September 3, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

September 3, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Senior Engineer, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the Board.

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

September 4, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

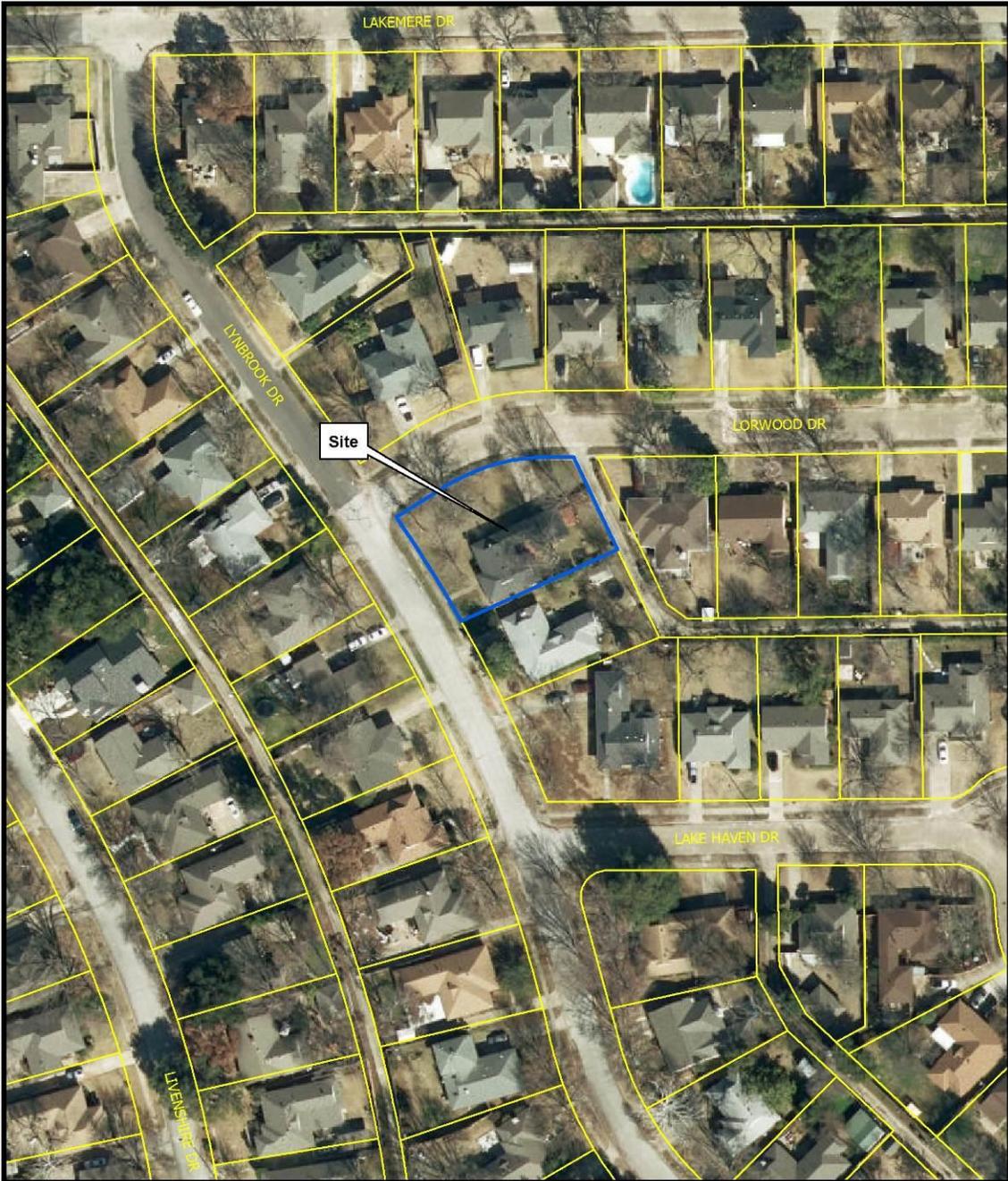


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# ZONING MAP

Case no: BDA189-091

Date: 8/14/2019



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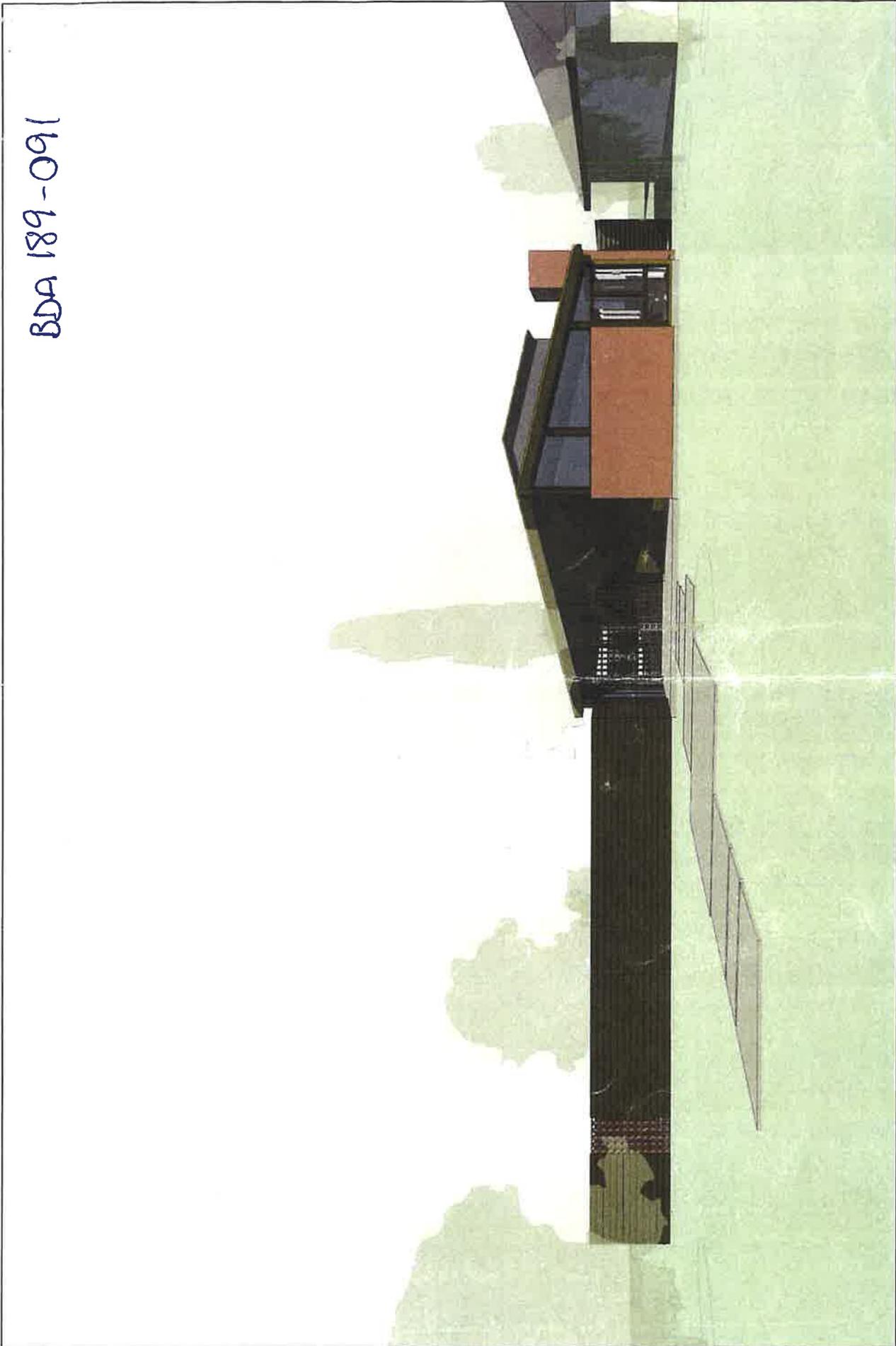
# AERIAL MAP

Case no: BDA189-091

Date: 8/14/2019



BDA 189-091

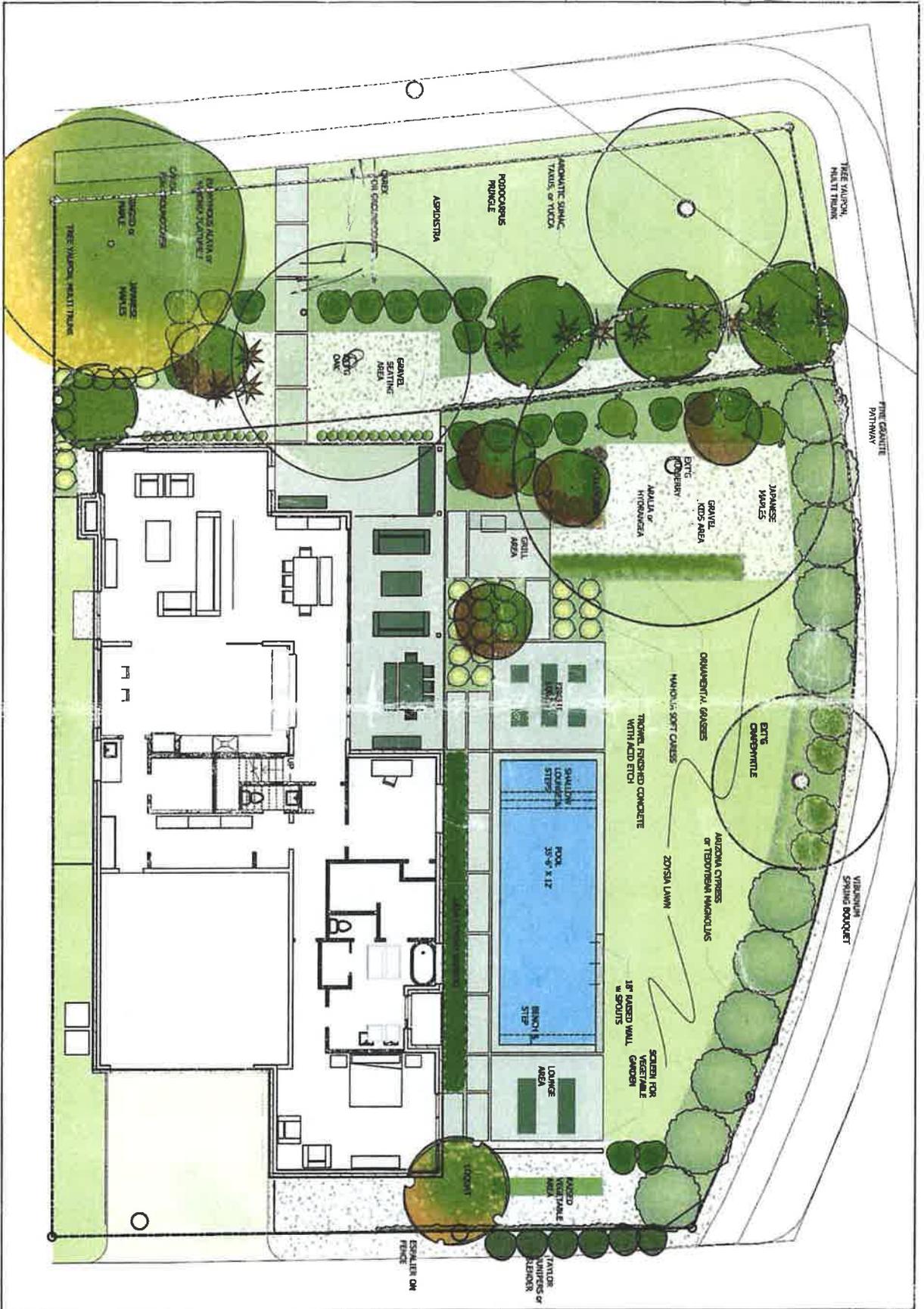


9216 LYNNBROOK I FRONT OF HOUSE

2019.05.09  
Helen and Lawson Short  
9216 Lynnbrook Dr.  
Dallas, TX 75238

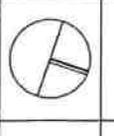
JUL 01 2019  
*[Signature]*  
 BY .....

BDA178-091  
Attach B PS2



Short-Lawson Residence  
 9216 Lynbrook Dr  
 Dallas, TX

Date: 06 Dec 2018  
 Revision:  
 Scale: 1/8" = 1'-0"



**David Rolston**  
 Registered Landscape Architects  
 5607 Dyer St. Dallas, Tx 75206 phone: 214.824.6333  
 www.davidrolstons.com

By signing this form, I am certifying that I approve of the zoning variance for an 8 foot fence along Lorwood.

	OWNER	ADDRESS		
1	KATHRYN PERKINS	9210	LYNBROOK DR.	<i>Kathryn Perkins</i>
2	WILSON ROGER N & CHRISTINE R	10620	LORWOOD	
3	SAVAGE BARBARA JANE	10626	LORWOOD	<i>Barbara Savage</i>
4	SANDERS TINA M	10630	LORWOOD	
5	MCCALL SHIRA	10636	LORWOOD	
6	UMBERGER DUSTIN	10607	LORWOOD	<i>D. UMBERGER</i>
7	BEEBOWER HUGH G	10611	LORWOOD	no current resident
8	MATTHIESEN KYLE	10615	LORWOOD	<i>[Signature]</i>
9	HANNA CHARLES G EST OF & MUNSUN HANNA	10621	LORWOOD	<i>50 rue MUNSUN HANNA</i>
10	CEDILLO MICHAEL & SARAH S	10625	LORWOOD	<i>S Cedillo</i>
	<del>DAVIDSON DORIE</del>	<del>9319</del>	<del>LYNBROOK</del>	
12	GUNTER JILL E	9315	LYNBROOK	
13	LELAND LAUREN ELIZABETH	9309	LYNBROOK	<i>L. Leland</i>
14	PRICE ROBERT LOUIS & VELDA JACKSON	9305	LYNBROOK	<i>J. Price</i>
15	GUSTAFSON SETH A & MALLORY J	9217	LYNBROOK	<i>Mallory Gustafson</i>
16	CRIM BRUCE C	9211	LYNBROOK	<i>[Signature]</i>
17	BALDOCK HAYDEN M & MEGAN A	9207	LYNBROOK	<i>[Signature]</i>
	CHEIS & AMANDA BAKER	10631	LORWOOD	<i>Amanda Baker</i>

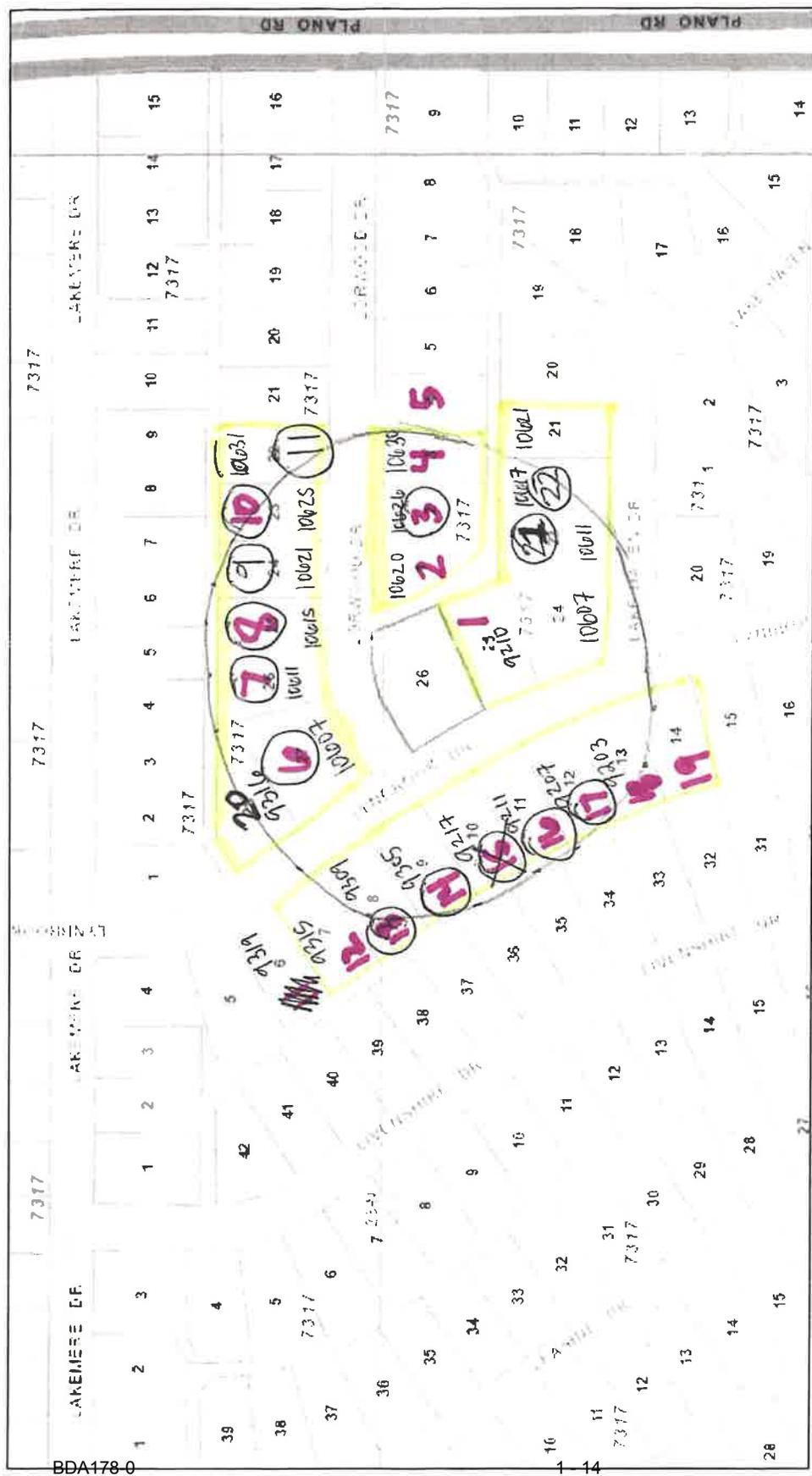
FOR SALE

DO NOT DISTURB

BDA189-091  
Attch B  
P54

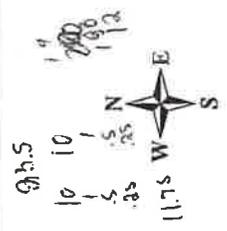
18	MADRALA BOGUSLAW T	9203	LYNBROOK	
19	DURAN IRMA ANGELICA	9145	LYNBROOK	
20	MORRIS JAMES C EST OF	10607	LAKE HAVEN	
21	WAGGONER JAMES R	10611	LAKE HAVEN	<i>James Waggoner</i>
22	BAIN BRIAN & HAILEY	10617	LAKE HAVEN	<i>Hailey Bain</i>
23	WAHLQUIST RAYMOND W	10621	LAKE HAVEN	
24	THIEM CLAUDIA	10627	LAKE HAVEN	

FYSB



BDA 189-091  
 Attach B  
 P 58

DCAD ID: 00000718672000000





City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 189-091

Data Relative to Subject Property:

Date: 5-30-19

Location address: 9216 Lynbrook

DMLUS 75238

Zoning District: R-10A R7.5(A)

Lot No.: 26 Block No.: H/7317 Acreage: 296.59 FT

Census Tract: ESTATE 14TH 130.05

Street Frontage (in Feet): 1) 92' 2) 142' 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Lawson and Helen Short

Applicant: MICHAEL SHORT Telephone: 214-236-3825

Mailing Address: 8030 Eagle Trail Zip Code: 75238

E-mail Address: MIKE @ SHORT CONSTRUCTION GROUP . COM

Represented by: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Affirm that an appeal has been made for a Variance  or Special Exception  of 20' to the REQUIRED FYSB + PROULAT FOR A 5' FYSB + LESS THAN 50% OPEN + 4' TO REQUIRED 4' FENCE HEIGHT FOR A 9' TALL 100% HORIZONTAL CENTER FENCE

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:  
WE HAVE TWO FRONT YARD SET BACKS AND CANNOT DEVELOP MY PROPERTY THE SAME AS MY NEIGHBORS

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

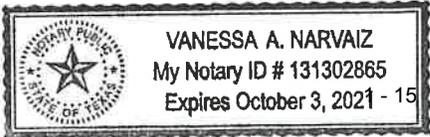
Affidavit

Before me the undersigned on this day personally appeared MICHAEL SHORT  
Michael Short  
(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: Michael Short  
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 29 day of May, 2019



MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

Building Official's Report

I hereby certify that MICHAEL RAY SHORT

did submit a request for a variance to the front yard setback regulations, and for a special exception to the fence standards regulations, and for a special exception to the fence height regulations

at 9216 Lynbrook Drive

BDA189-091. Application of MICHAEL RAY SHORT for a variance to the front yard setback regulations, and for a special exception to the fence standards regulations, and for a special exception to the fence height regulations at 9216 LYNBROOK DR. This property is more fully described as Lot 26, Block H/7317, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and 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 and requires a front yard setback of 25 feet. The applicant proposes to construct a single family residential accessory structure and provide a 5 foot front yard setback, which will require a 20 foot variance to the front yard setback regulations, and to construct 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 to the fence regulations, and to construct an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence regulations.

Sincerely,

*Philip Sikes*  
Philip Sikes, Building Official



Printed: 5/30/2019

**Legend**

- City Limits
- School
- Floodplain
- 100 Year Flood Zone
- Mill's Creek
- Peak's Branch
- X Protected by Levee
- Parks
- BDA178-0
- railroad
- Certified Parcels
- Base Zoning
- PD193 Oak Lawn
- Dallas Environmental Corridors
- SPSD Overlay
- Deed Restrictions
- SUP
- Dry Overlay
- D
- D-1
- CP
- SP
- MD Overlay
- Historic Subdistricts
- Historic Overlay
- Height Map Overlay
- CD Subdistricts
- PD Subdistricts
- PDS Subdistricts
- NSO Subdistricts
- NSO\_Overlay
- Escarpment Overlay
- Parking Management Overlay
- Shop Front Overlay

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)



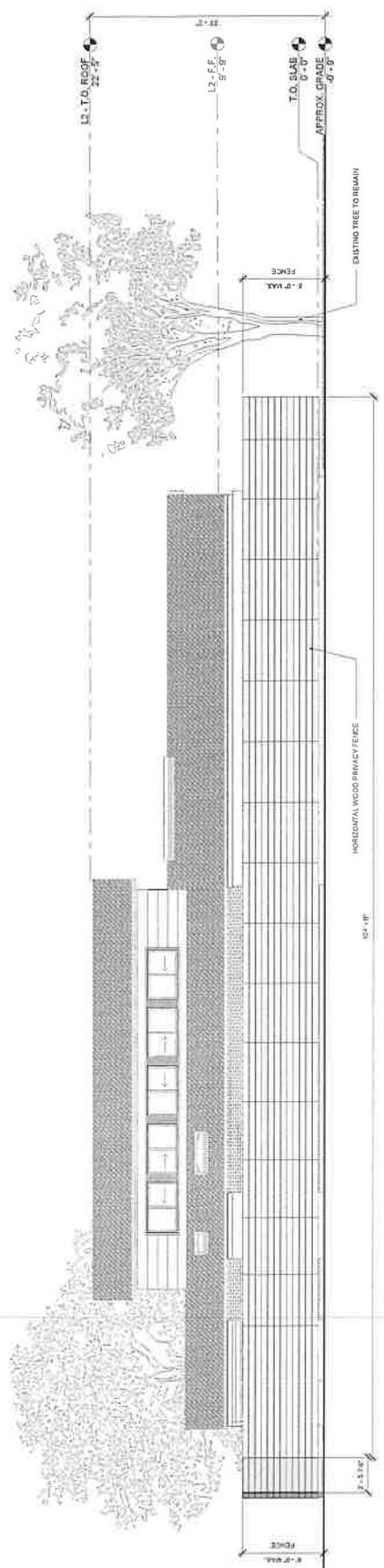
Panel C

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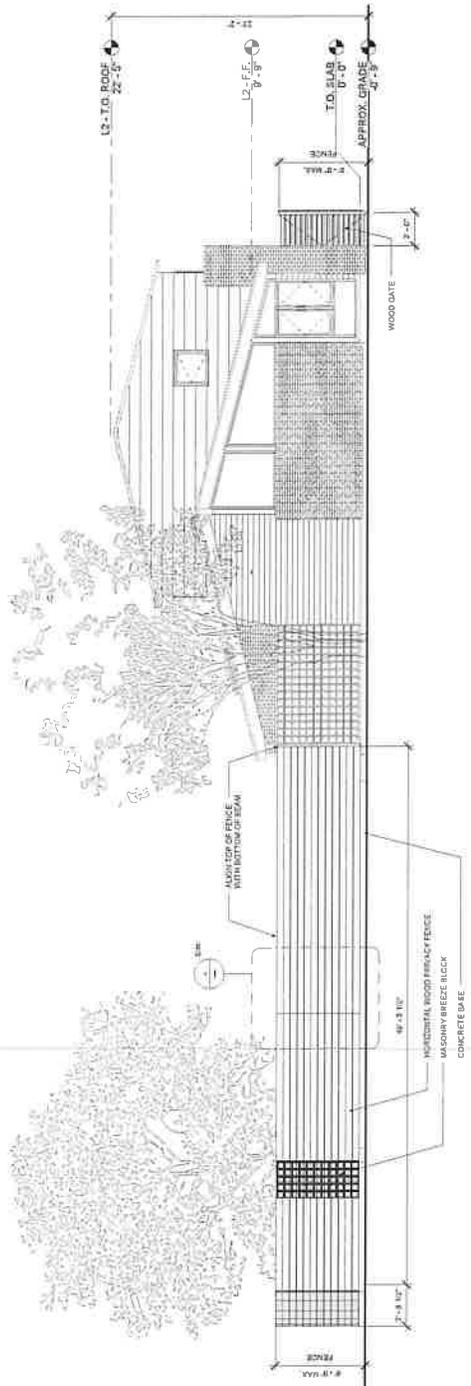
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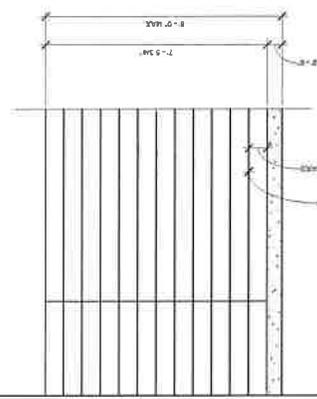




FENCE - NORTH ELEVATION - FROM LORWOOD  
3/16" = 1'-0"



FENCE - WEST ELEVATION - FROM LYNBROOK  
3/16" = 1'-0"



WOOD FENCE ELEVATION DETAIL  
1/2" = 1'-0"



 1:1,200	<b>NOTIFICATION</b>		Case no: <b>BDA189-091</b>
	<div style="border: 1px solid black; padding: 2px; display: inline-block;">200'</div> AREA OF NOTIFICATION <div style="border: 1px solid black; padding: 2px; display: inline-block;">30</div> NUMBER OF PROPERTY OWNERS NOTIFIED		Date: <b>8/14/2019</b>

# *Notification List of Property Owners*

## *BDA189-091*

### *30 Property Owners Notified*

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	9216 LYNBROOK DR	SHORT LAWSON & HELEN
2	9315 LYNBROOK DR	GUNTER JILL E
3	9309 LYNBROOK DR	LELAND LAUREN ELIZABETH
4	9305 LYNBROOK DR	PRICE ROBERT LOUIS &
5	9217 LYNBROOK DR	GUSTAFSON SETH A &
6	9211 LYNBROOK DR	CRIM BRUCE C
7	9207 LYNBROOK DR	BALDOCK HAYDEN M & MEGAN A
8	9203 LYNBROOK DR	MADRALA BOGUSLAW T
9	9145 LYNBROOK DR	DURAN IRMA ANGELICA
10	9206 LIVENSHERE DR	BOWLING STEPHANIE & BRIAN JOHNSON
11	9210 LIVENSHERE DR	WELCH MARY LOU SCHRIEFER
12	9214 LIVENSHERE DR	DIOS COURTNEY COOK & AARON MICHAEL
13	10620 LORWOOD DR	CHILDERS FLORA MINNIE
14	10626 LORWOOD DR	SAVAGE BARBARA JANE
15	10630 LORWOOD DR	SANDERS TINA M
16	10621 LAKE HAVEN DR	WAHLQUIST RAYMOND W
17	10617 LAKE HAVEN DR	BAIN BRIAN & HAILEY
18	10611 LAKE HAVEN DR	WAGGONER JAMES R
19	10607 LAKE HAVEN DR	MORRIS JAMES C EST OF
20	9210 LYNBROOK DR	PERKINS KATHRYN E
21	10620 LAKEMERE DR	DOWIS CRAIG L
22	10626 LAKEMERE DR	ROBERSON RICHARD & PATRICIA M
23	10630 LAKEMERE DR	CARLTON WILLIAM SETH & ASHLEIGH ELIZABETH
24	10631 LORWOOD DR	BAKER CHRISTOPHER A & AMANDA L
25	10625 LORWOOD DR	CEDILLO MICHAEL & SARAH S
26	10621 LORWOOD DR	HANNA CHARLES G EST OF &

08/14/2019

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
27	10615 LORWOOD DR	MATTHIESEN KYLE
28	10611 LORWOOD DR	BEEBOWER HUGH G
29	10607 LORWOOD DR	BUEHRLE CLAYTON M
30	9316 LYNBROOK DR	STULTZ SARA A

**FILE NUMBER:** BDA189-092(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Rob Baldwin of Baldwin Associates for a variance to the landscape regulations at 308 N. Bishop Avenue. This property is more fully described as Lot 1A, Block 27/3147, and is zoned PD 830 (Subdistrict 3 and Subdistrict 3B), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a variance to the landscape regulations.

**LOCATION:** 308 N. Bishop Avenue

**APPLICANT:** Rob Baldwin of Baldwin and Associates

**REQUEST:**

A request for a variance to the landscape regulations is made to obtain final permits and certificates of occupancies for retail uses/structure on the subject site, and not fully provide the required landscape/street tree requirement of PD 830 and design standard requirements in Article X: The Landscape Regulations.

**STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- While the City of Dallas Chief Arborist supports this request with certain conditions imposed, staff recommends that the request for variance to the landscape regulations be denied because that the applicant had not substantiated how the variance is necessary to permit development of this is flat, rectangular in shape, and, according to the application, is 0.399 acres or approximately 17,400 square foot site in area in order for it to be developed in a manner commensurate with the development upon other parcels of land with the same PD 830 (Subdistrict 3 & 3B) zoning district.
- Staff concluded that the applicant had not substantiated how if the Board were to grant this request, it would not be to relieve a self-created or personal hardship since the original plan review for permit indicated that the property complied with the landscape regulations of PD 830 and Article X applicable in September of 2017, and that a pergola originally identified within the property was constructed in the front yard along Melba Street which displaced four new trees from the front yard shown on the original pan review.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 830 (Subdistrict 3 & 3B) (Planned Development)  
 North: CD 7 (Conservation District)  
 South: PD 830 (Subdistrict 3B) (Planned Development)  
 East: PD 830 (Subdistrict 3B) (Planned Development)  
 West: PD 830 (Subdistrict 3) (Planned Development)

**Land Use:**

The subject site is developed with retail uses. The areas to the north, south, and west are developed with retail uses, and the area to the east is being developed as a multifamily use.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for a variance to the landscape regulations focuses on obtaining final permits and certificates of occupancies for retail uses/structure on the subject site, and not fully provide the required landscape/street tree requirement of PD 830 and design standard requirements in Article X: The Landscape Regulations.
- 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.

- Building Inspection states that PD 830 landscaping is Article X with exceptions. The Article X requirements are eligible for a special exception, as specified in Article X. However, the additional landscape requirements (the exceptions) are not and require a landscape variance.
- 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 variance to the landscaping regulations of PD 830, Subdistrict 3. The base ordinance is Article X. Subdistrict 3 requires additional landscaping provisions for street trees to be no closer than 25 feet on center for every 40 feet of street frontage (7 trees) and may be planted within 25 feet of back of curb. The variance standard is applied to this case due to this provision. In comparison, Article X typically requires one tree for every 50 feet of street frontage (5 trees) and may be planted within 30 feet of back of curb.
- The Chief Arborist's memo states the following with regard to "provision":
  - The original plan review for permit indicated that the property complied with the landscape regulations of PD 830, Sub. 3 and Article X applicable in September of 2017. Existing trees on the property are utilized for both site trees and street trees.
  - A significant effort was made by the owners to retain existing large mature shade trees on the property. Some of these trees are utilized to compensate for street tree deficiency based on their proximity to the street frontages. Long-term survival of the trees will require continued care and monitoring of the owner.
  - The sidewalk/parkway along Melba Street is relatively narrow, has overhead electric lines, and does not provide suitable location for the placement of trees in the parkway. A license is provided in PD 830 for the placement of landscaping in the right-of-way if suitable conditions permit.
- The Chief Arborist's memo states the following with regard to "deficiencies":
  - Seven large canopy street trees are required for the development under PD 830. The proposed plan provides no street trees along Melba Street. The plan uses one large mature tree on the property line and two additional trees in the northwest corner of the property along Bishop Avenue.
  - A pergola originally identified within the property is constructed in the front yard along Melba Street which displaced four new trees from the front yard shown on the original plan review. The pergola was constructed on location with an addendum dated July 27, 2019. Addendum states "this approval does not permit the violation of any city ordinance or state law."
  - The two live oak trees in the northwest corner of the property are identified in a platted alley site easement. It is recommended by the chief arborist the two trees be removed from the location. An alternative location would need to be identified for the trees.
  - After reviewing the original approved and the proposed alternate landscape plans, the chief arborist has determined the property is deficient one design

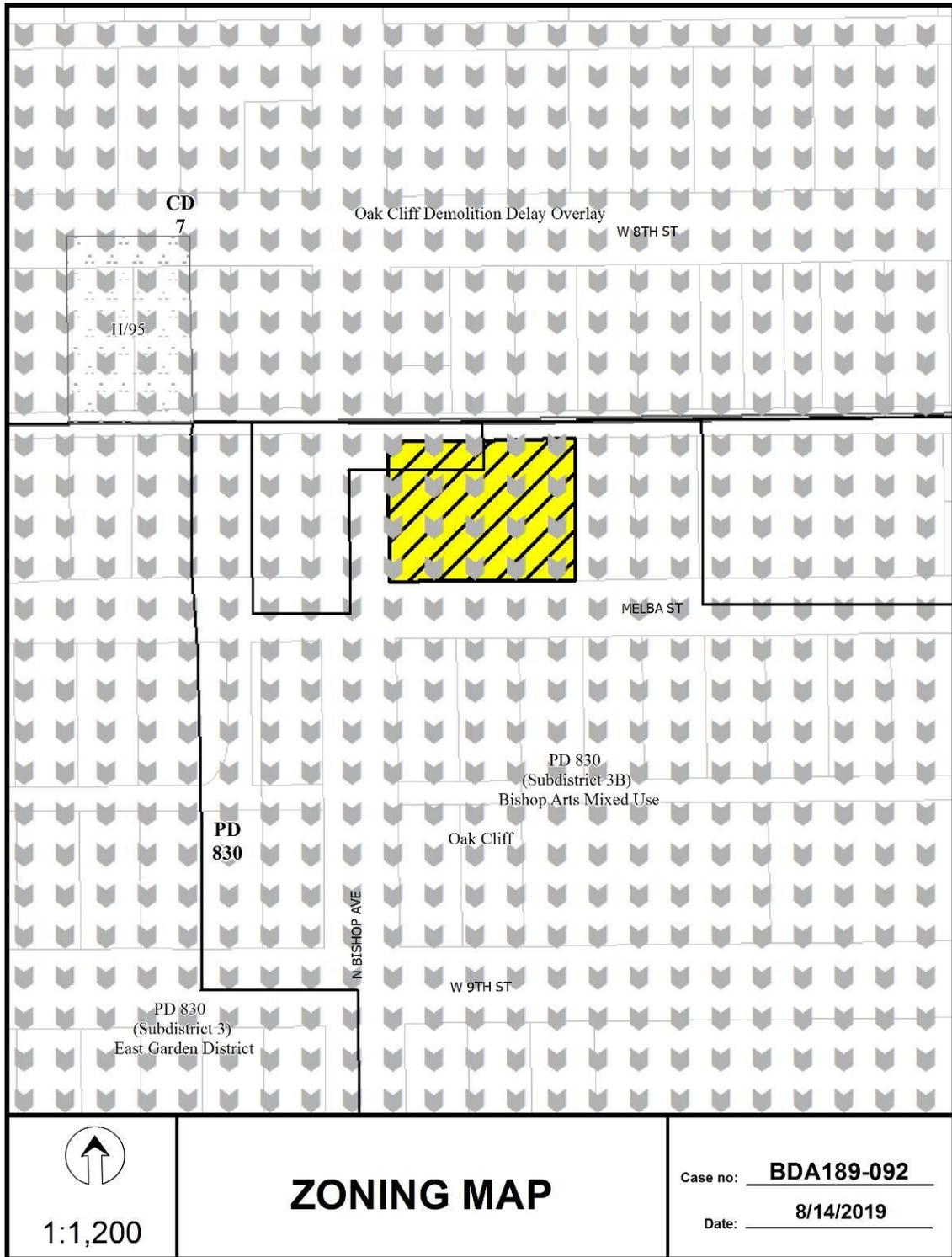
standard (Section 51A-10.126). Pedestrian amenities standard is accepted but an enhanced street buffer is not provided. For compliance, a second design standard of Article X (2017) would need to be identified.

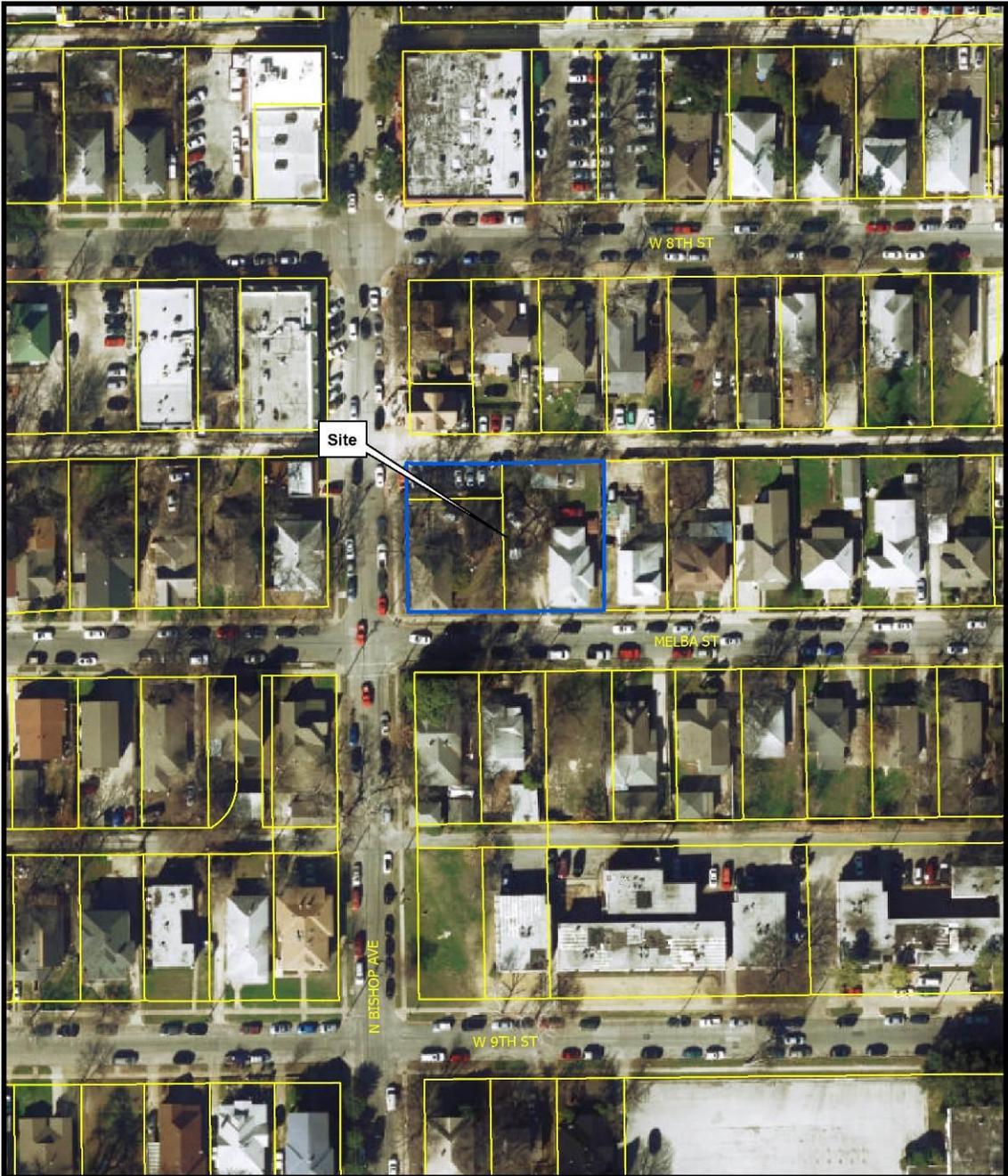
- The Chief Arborist’s memo states the following with regard to “recommendation”:
  - The chief arborist finds the alternative landscape plan deficient of required street trees, which is addressed specifically in PD 830, but has a mature tree canopy shading the property which helps mitigate the lack of street trees. The survival and maintenance of the mature trees on site is fundamental to acceptability of the alternate landscape plan, but the long-term assessment of the trees is difficult to ascertain. I support the landscape plan but with qualifications.
  - If the Board finds to approve the alternate landscape plan, the chief arborist recommends the following conditions:
    - Trees must be eliminated from the alley site easement along Bishop Avenue and should be no closer than ten feet from a structure on the lot.
    - An existing mature tree on the landscape plan that is removed must be replaced by a large tree species and planted within 20 feet of the removed tree on the plan. No less than 5 large site trees shall be maintained on site. Minimum size of tree at planting is 4-inch caliper.
    - A landscape area with bedding plants and shrubs must be provided between the pergola and the sidewalk.
- According to DCAD records the improvement listed for property addressed at 308 N. Bishop Avenue is a restaurant built in 2018 with 6,896 square feet.
- The subject site is flat, rectangular in shape, and, according to the application, is 0.399 acres (or approximately 17,400 square feet) in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the landscape 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 830 (Subdistrict 3 & 3B) 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 830 (Subdistrict 3 & 3B) zoning classification.

**Timeline:**

May 31, 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.

- August 12, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 12, 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 August 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> 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."
- September 3, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Senior Engineer, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the Board.
- September 5, 2019: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).





1:1,200

# AERIAL MAP

Case no: BDA189-092

Date: 8/14/2019

# Memorandum



CITY OF DALLAS

Date September 5, 2019  
To Steve Long, Chief Planner  
Subject BDA #189-092 308 N Bishop Avenue arborist report

## Request

The applicant is requesting a variance to the landscaping regulations of PD 830, Subdistrict 3. The base ordinance is Article X. Subdistrict 3 requires additional landscaping provisions for street trees to be no closer than 25 feet on center for every 40 feet of street frontage (7 trees) and may be planted within 25 feet of back of curb. The variance standard is applied to this case due to this provision. In comparison, Article X typically requires one tree for every 50 feet of street frontage (5 trees) and may be planted within 30 feet of back of curb.

## Provision

- The original plan review for permit indicated that the property complied with the landscape regulations of PD 830, Sub. 3 and Article X applicable in September of 2017. Existing trees on the property are utilized for both site trees and street trees.
- A significant effort was made by the owners to retain existing large mature shade trees on the property. Some of these trees are utilized to compensate for street tree deficiency based on their proximity to the street frontages. Long-term survival of the trees will require continued care and monitoring of the owner.
- The sidewalk/parkway along Melba Street is relatively narrow, has overhead electric lines, and does not provide suitable location for the placement of trees in the parkway. A license is provided in PD 830 for the placement of landscaping in the right-of-way if suitable conditions permit.

## Deficiency

- Seven large canopy street trees are required for the development under PD 830. The proposed plan provides no street trees along Melba Street. The plan uses one large mature tree on the property line and two additional trees in the northwest corner of the property along Bishop Avenue.
- A pergola originally identified within the property is constructed in the front yard along Melba Street which displaced four new trees from the front yard shown on the original plan review. The pergola was constructed on location with an addendum dated July 27, 2019. Addendum states "this approval does not permit the violation of any city ordinance or state law."
- The two live oak trees in the northwest corner of the property are identified in a platted alley site easement. It is recommended by the chief arborist the two trees be removed from the location. An alternative location would need to be identified for the trees.
- After reviewing the original approved and the proposed alternate landscape plans, the chief

arborist has determined the property is deficient one design standard (Section 51A-10.126). Pedestrian amenities standard is accepted but an enhanced street buffer is not provided. For compliance, a second design standard of Article X (2017) would need to be identified.

### **Recommendation**

The chief arborist finds the alternative landscape plan deficient of required street trees, which is addressed specifically in PD 830, but has a mature tree canopy shading the property which helps mitigate the lack of street trees. The survival and maintenance of the mature trees on site is fundamental to acceptability of the alternate landscape plan, but the long-term assessment of the trees is difficult to ascertain. I support the landscape plan but with qualifications.

If the Board finds to approve the alternate landscape plan, the chief arborist recommends the following conditions:

1. Trees must be eliminated from the alley site easement along Bishop Avenue and should be no closer than ten feet from a structure on the lot.
2. An existing mature tree on the landscape plan that is removed must be replaced by a large tree species and planted within 20 feet of the removed tree on the plan. No less than 5 large site trees shall be maintained on site. Minimum size of tree at planting is 4-inch caliper.
3. A landscape area with bedding plants and shrubs must be provided between the pergola and the sidewalk.

Philip Erwin  
Chief Arborist  
Building Inspection



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 189-092
Date: 5-31-19

Data Relative to Subject Property:

Location address: 308 N. Bishop Avenue Zoning District: PD 830 Sub. 3
Lot No. 1A Block No.: 27/3147 Acreage: .399 of 2,000 Census Tract: 47.00
Street Frontage (in Feet): 1) 116 2) 150 3) 4) 5)

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Bishop Arts LLC
Applicant: Rob Baldwin, Baldwin Associates Telephone: 214-824-7949
Mailing Address: 3904 Elm Street Suite B Dallas TX Zip Code: 75226
E-mail Address: rob@baldwinplanning.com

Represented by: Rob Baldwin, Baldwin Associates Telephone: 214-824-7949
Mailing Address: 3904 Elm Street Suite B Dallas TX Zip Code: 75226
E-mail Address: rob@baldwinplanning.com

Affirm that an appeal has been made for a Variance, or Special Exception, of landscaping

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

The location of exiting trees and underground utilities makes it impossible to meet the tree requirements.

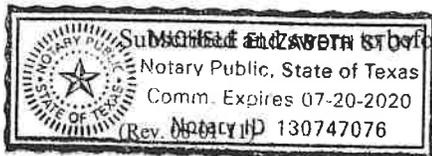
Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared Robert Baldwin (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: (Affiant/Applicant's signature)



Subscribed and sworn to before me this 31 day of May, 2019
Notary Public, State of Texas
Comm. Expires 07-20-2020
Notary ID 130747076
Michele E. Stovall
Notary Public in and for Dallas County, Texas

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

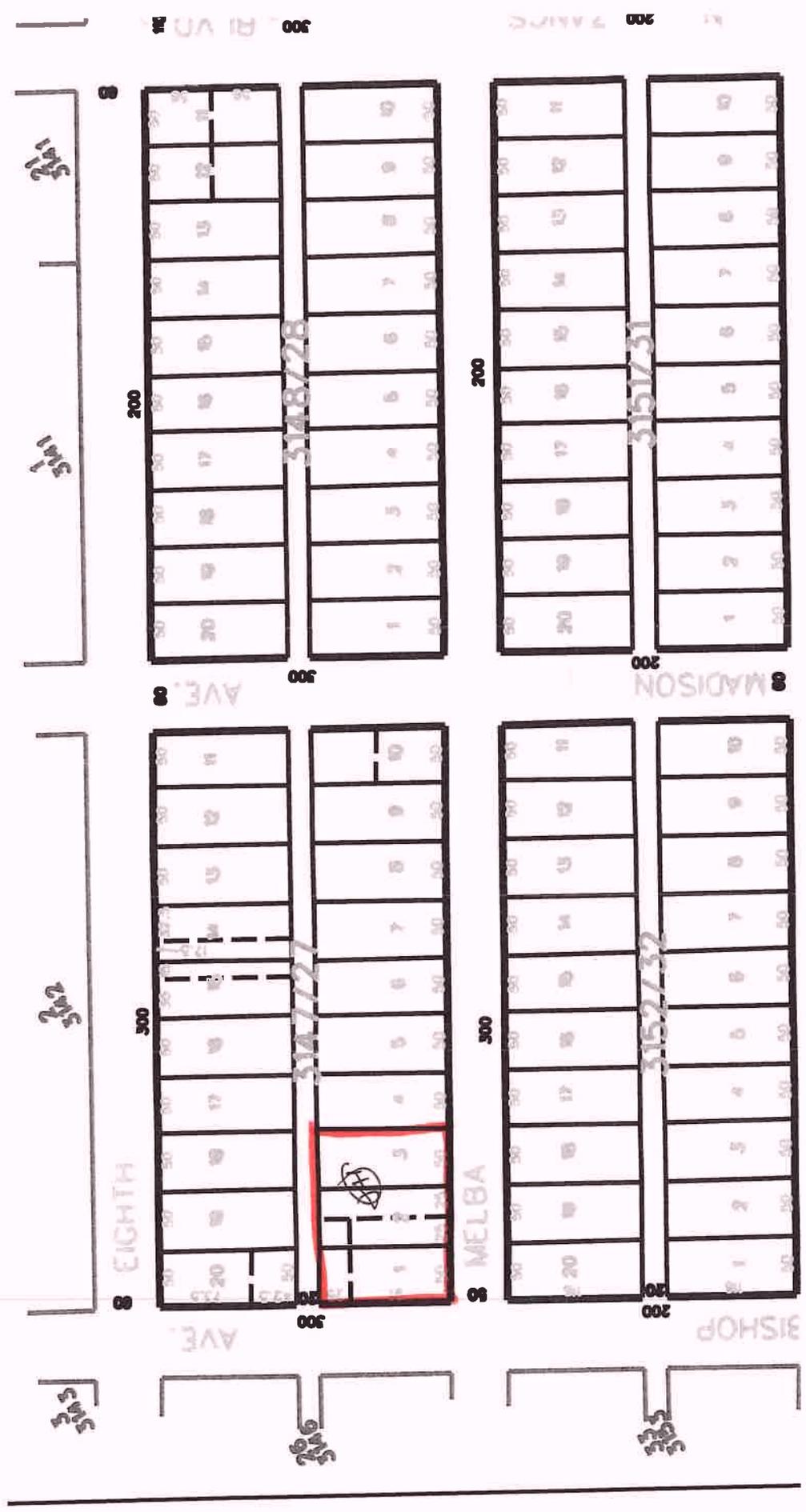
I hereby certify that BALDWIN ASSOCIATES

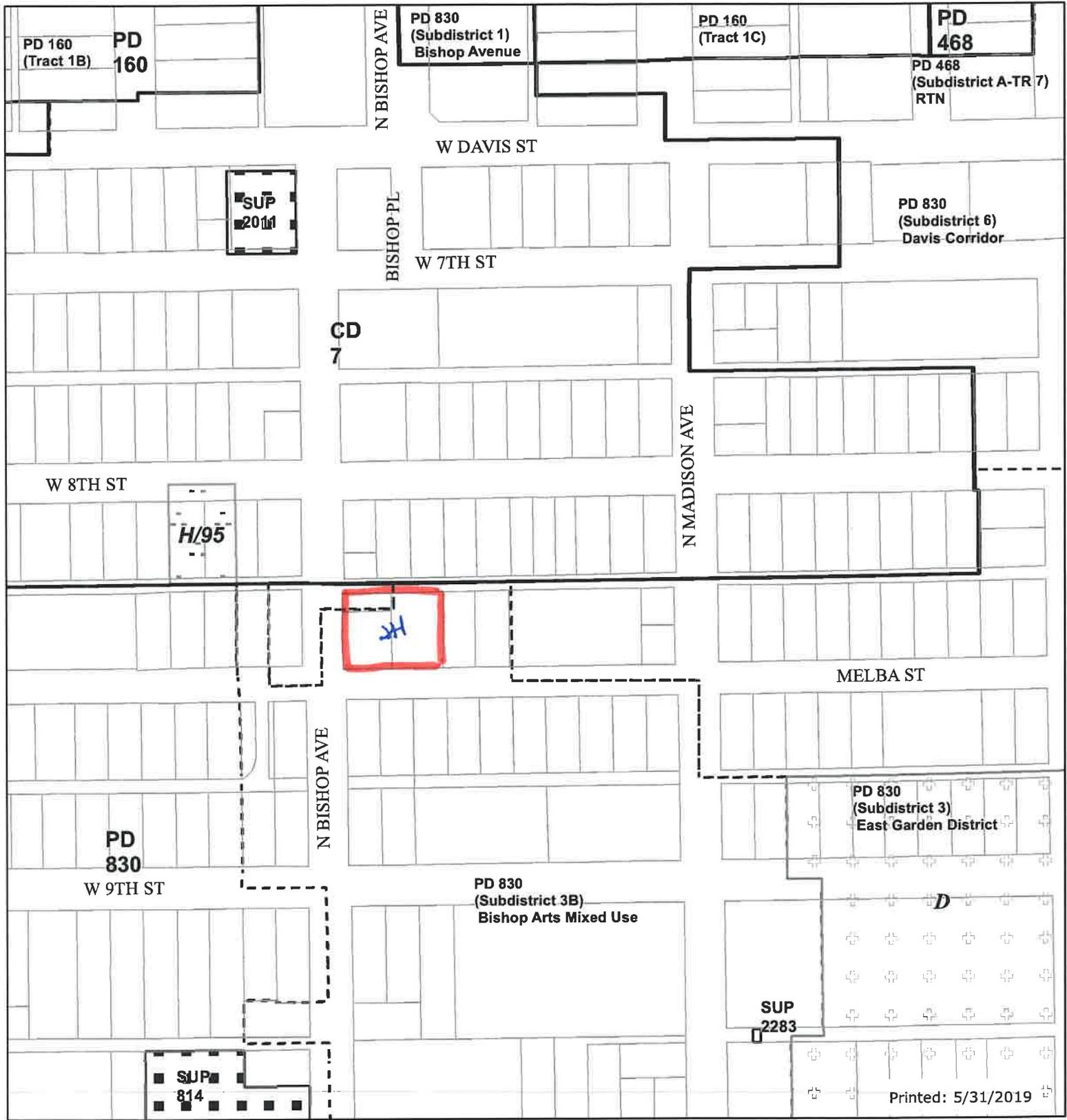
did submit a request for a variance to the landscaping regulations  
at 308 N. Bishop Avenue

BDA189-092. Application of BALDWIN ASSOCIATES for a variance to the landscaping regulations at 308 N. Bishop Ave. This property is more fully described as Lot 1A, Block 27/3147, and is zoned PD-830 (Subdistrict 3), which requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide an alternate landscape plan, which will require a variance to the landscape regulations.

Sincerely,

*Philip Sikes*  
Philip Sikes, Building Official





### Legend

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay                |
| Peak's Branch        | SPSP Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Ship Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)





**BISHOP ARTS LLC**  
101 NORTH LANG BLVD, SUITE 200  
DALLAS, TX 75208  
214-955-1091

**EXAIR DEVELOPMENT LLC**  
101 NORTH LANG BLVD, SUITE 200  
DALLAS, TX 75208  
214-955-1091

**Pacheco Koch**  
LANDSCAPE ARCHITECTS  
101 NORTH LANG BLVD, SUITE 200  
DALLAS, TX 75208  
214-955-1091

**360**  
GENERAL ENGINEER  
101 NORTH LANG BLVD, SUITE 200  
DALLAS, TX 75208  
214-955-1091

**LEE ENGINEER**  
SCHEIDT & BOND  
101 NORTH LANG BLVD, SUITE 200  
DALLAS, TX 75208  
214-955-1091

**DATE:** 10/15/14  
**SCALE:** 1/8" = 1'-0"



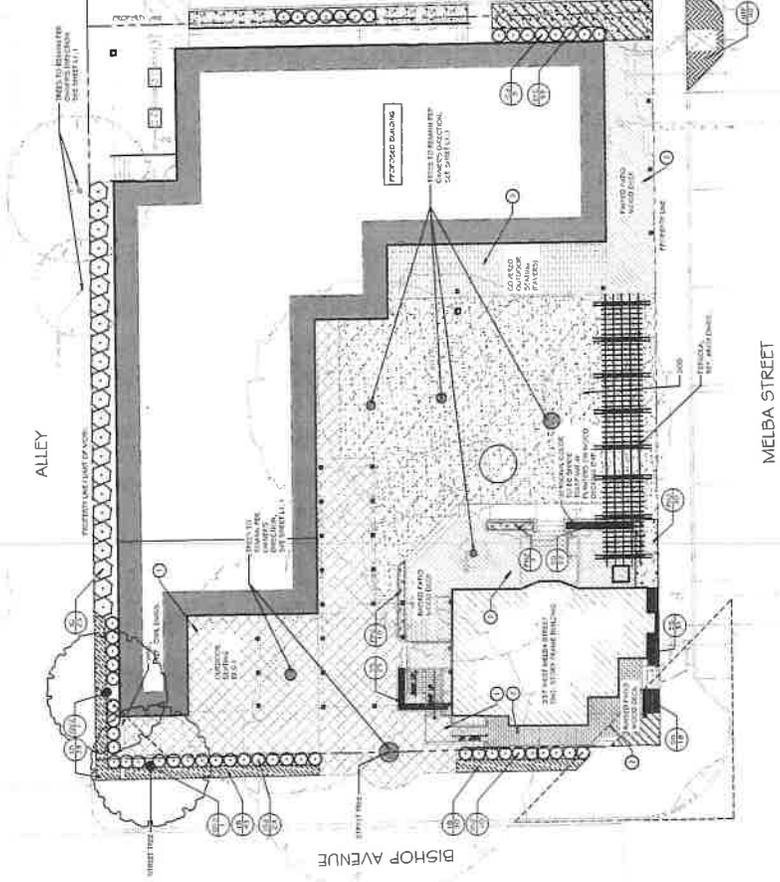
### PLANT SCHEDULE

SYMBOL	PLANT NAME	SIZE	PLANT						
1	SPRING BLOSSOM	3" x 4"	100%	100%	100%	100%	100%	100%	100%
2	...	...	...	...	...	...	...	...	...

### LANDSCAPE SCHEDULE (REFERENCE ONLY)

SYMBOL	DESCRIPTION	QTY
1	...	...
2	...	...
3	...	...

- ### PLANTING GENERAL NOTES
1. ALL PLANTING SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY OF DALLAS PLANTING SPECIFICATIONS AND THE TEXAS PLANTING SPECIFICATIONS.
  2. ALL PLANTING SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY OF DALLAS PLANTING SPECIFICATIONS AND THE TEXAS PLANTING SPECIFICATIONS.
  3. ALL PLANTING SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY OF DALLAS PLANTING SPECIFICATIONS AND THE TEXAS PLANTING SPECIFICATIONS.
  4. ALL PLANTING SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY OF DALLAS PLANTING SPECIFICATIONS AND THE TEXAS PLANTING SPECIFICATIONS.
  5. ALL PLANTING SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY OF DALLAS PLANTING SPECIFICATIONS AND THE TEXAS PLANTING SPECIFICATIONS.
  6. ALL PLANTING SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY OF DALLAS PLANTING SPECIFICATIONS AND THE TEXAS PLANTING SPECIFICATIONS.
  7. ALL PLANTING SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY OF DALLAS PLANTING SPECIFICATIONS AND THE TEXAS PLANTING SPECIFICATIONS.
  8. ALL PLANTING SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY OF DALLAS PLANTING SPECIFICATIONS AND THE TEXAS PLANTING SPECIFICATIONS.



### LANDSCAPE REQUIREMENTS TABLE

SYMBOL	PLANT NAME	SIZE	PLANT						
1	...	...	...	...	...	...	...	...	...
2	...	...	...	...	...	...	...	...	...

### PLANTING PLAN

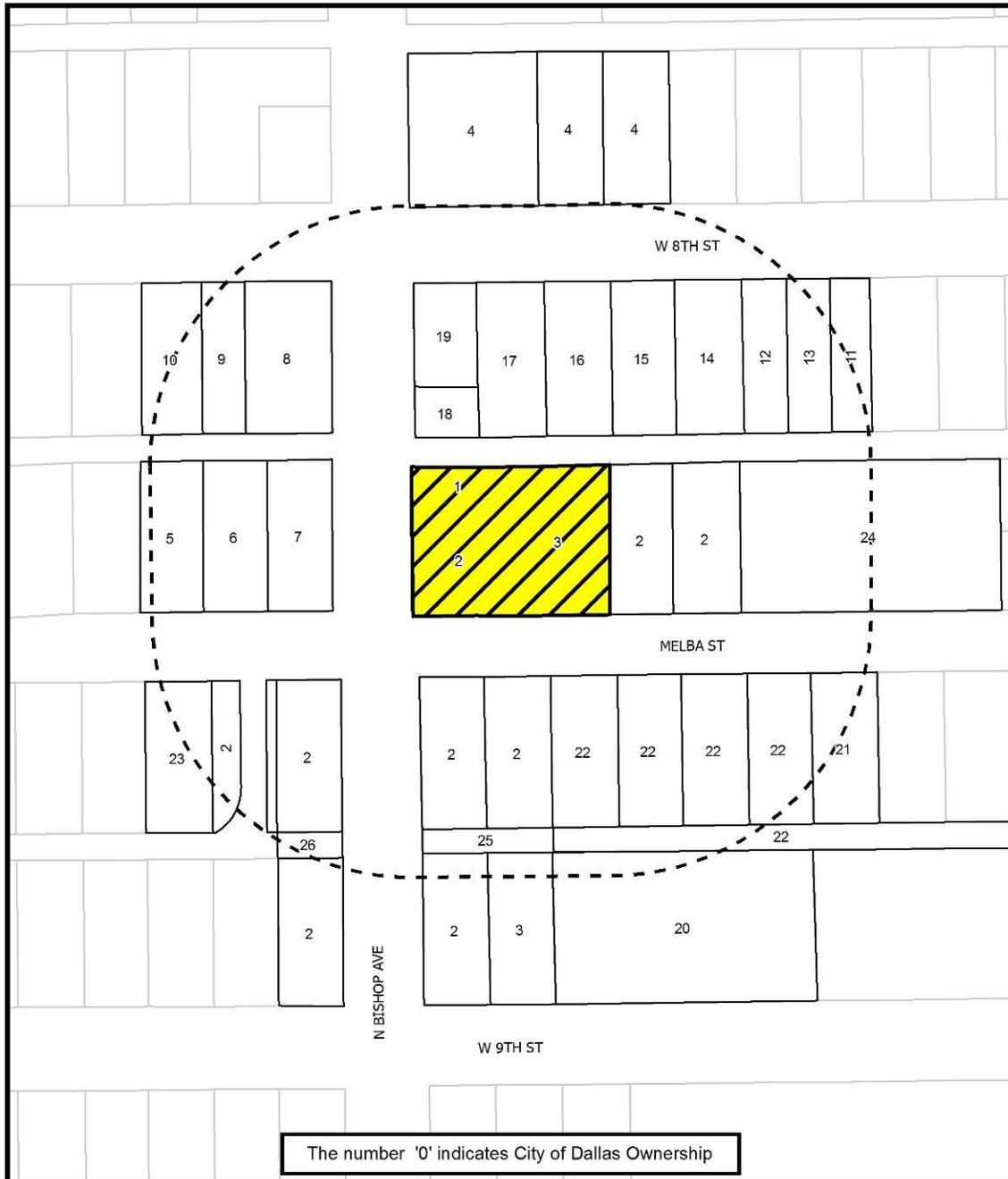
**BISHOP ARTS**  
**PLAZA**  
**BUILDING 'W'**  
**CITY OF DALLAS, DALLAS COUNTY, TEXAS**

NO.	DATE	DESCRIPTION
1	10/15/14	...
2	...	...

**PROJECT NO.:** BISHOP ARTS PROJECT - BUILDING F  
**PROJECT NAME:** 308 N. BISHOP AVE DALLAS, TX 75208  
**DATE:** 10/15/14

**SCALE:** 1/8" = 1'-0"

**DATE:** 10/15/14  
**SCALE:** 1/8" = 1'-0"



 1:1,200	<h2>NOTIFICATION</h2>	Case no: <b>BDA189-092</b>			
	<table border="1"> <tr> <td style="text-align: center;"><b>200'</b></td> <td>AREA OF NOTIFICATION</td> </tr> <tr> <td style="text-align: center;"><b>26</b></td> <td>NUMBER OF PROPERTY OWNERS NOTIFIED</td> </tr> </table>	<b>200'</b>	AREA OF NOTIFICATION	<b>26</b>	NUMBER OF PROPERTY OWNERS NOTIFIED
<b>200'</b>	AREA OF NOTIFICATION				
<b>26</b>	NUMBER OF PROPERTY OWNERS NOTIFIED				

# *Notification List of Property Owners*

***BDA189-092***

***26 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	308 N BISHOP AVE	BISHOP ARTS LLC
2	337 MELBA ST	BISHOP ARTS PH 1A LLC
3	329 MELBA ST	BISHOP ARTS PHASE 1A LLC
4	333 W 8TH ST	BISHOP STREET PARTNERS JV
5	409 MELBA ST	HOMETOWN CLASSIC BLDRS LLC
6	405 MELBA ST	MLA RLB LP
7	403 MELBA ST	BISHOP & MELBA LLC
8	313 N BISHOP AVE	MLA-RLB LP
9	404 W 8TH ST	SULLIVAN JAMES W TR &
10	408 W 8TH ST	GOOD SPACE ARTS INC
11	312 W 8TH ST	SW MOONLIGHT LLN
12	318 W 8TH ST	SANDOVAL ANTONIO
13	314 W 8TH ST	LOS DETECTIVES SALVAJES INC
14	320 W 8TH ST	LAMBERT REAL ESTATE HOLDINGS
15	324 W 8TH ST	BMR JOHNSON INVESTMENTS L
16	328 W 8TH ST	SANCHEZ & SANCHEZ LLC
17	332 W 8TH ST	DUARTE JESUS JR &
18	314 N BISHOP AVE	GOOD SPACE X LLC
19	336 W 8TH ST	WISTERIA HILLS LLC
20	321 W 9TH ST	EXXIR BISHOP NORTH LLC
21	312 MELBA ST	EXXIR BISHOP NORTH LLC
22	316 MELBA ST	EXXIR BISHOP NORTH LLC
23	410 MELBA ST	410 MELBA LLC
24	305 MELBA ST	UG MELBA LLC
25	336 MELBA ST	BISHOP ARTS PHASE 1A LLC
26	275 N BISHOP AVE	BISHOP ARTS VILLAGE LLC

08/14/2019

*Label # Address*

*Owner*

**FILE NUMBER:** BDA189-094(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Jeffrey W. Crosson II for special exceptions to the visual obstruction regulations at 5451 McCommas Boulevard. This property is more fully described as Lot 1, Block C/2915, and is zoned CD 9, which requires a 20 foot visibility triangle at driveways. The applicant proposes to locate and maintain items in required visibility triangles at a driveway, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 5451 McCommas Boulevard

**APPLICANT:** Jeffery W. Crosson II

**REQUEST:**

Requests for a special exception to the visual obstruction regulations is made to maintain an existing 8' high solid wood fence located in the 20' visibility triangles on the north and south sides of the driveway into the site from McMillan Avenue on a site that is developed with a single family home use/structure.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

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

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The Sustainable Development Department Senior Engineer has submitted a review comment sheet and related document marked "recommends denial". The Senior Engineer comments that: 1) City installed bike lanes with buffers on McMillan Avenue in 2015 based on its connectivity and pedestrian activity on existing 4-foot sidewalk, and 2) compromised visibility by fence affects pedestrian and bicyclists that do not anticipate vehicles backing out of the driveway.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be denied because the items to be maintained in the drive approach visibility triangles constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 9 (Conservation District)  
North: D(A) (Duplex)  
South: CD 9 (Conservation District)  
East: CD 9 (Conservation District)  
West: CD 9 (Conservation District)

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- The requests for special exceptions to the visual obstruction regulations focuses on maintaining an existing 8’ high solid wood fence located in the 20’ visibility triangles on the north and south sides of the driveway into the site from McMillan Avenue on a site that is developed with a single family home use/structure.
- Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The property is located in CD 9 zoning district which requires the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.
- A site plan and elevation have been submitted indicating portions of an 8’ high solid wood fence located in the 20’ visibility triangles on the north and south sides of the driveway into the site from McMillan Avenue.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet and related document (see Attachment B). The review comment sheet is marked “recommends denial” with the following additional comments: “City installed bike lanes with buffers on McMillan Avenue in 2015 based on its connectivity and pedestrian activity on existing 4-foot sidewalk. (Attached);

compromised visibility by fence affects pedestrian and bicyclists that do not anticipate vehicles backing out of the driveway”.

- The applicant has the burden of proof in establishing how granting these requests to maintain portions of an 8’ high solid wood fence located in the 20’ visibility triangles on the north and south sides of the driveway into the site from McMillan Avenue does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items in the two 20’ drive approach visibility triangles into the site from McMillan to that what is shown on these documents.

### **Timeline:**

June 7, 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.

August 12, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

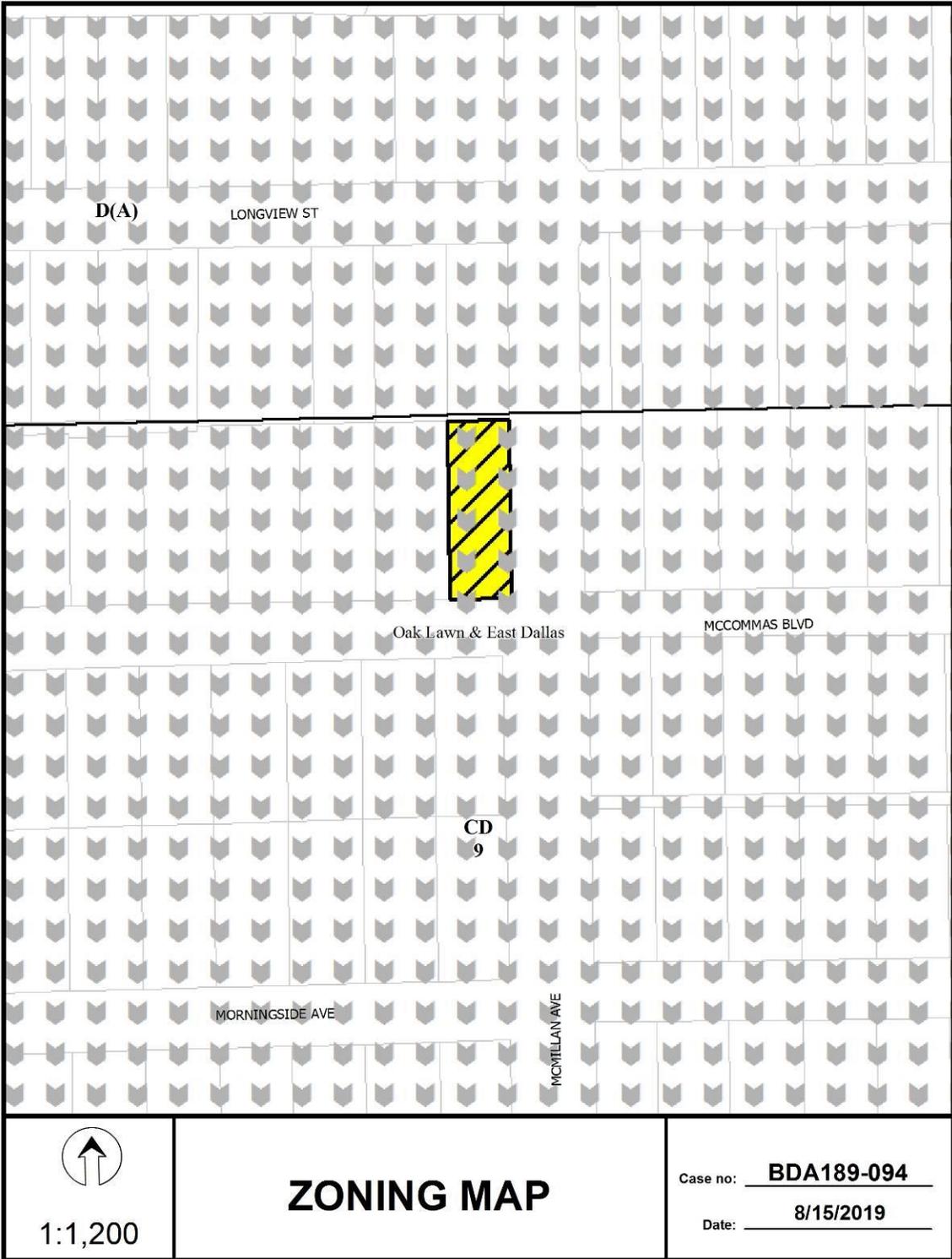
August 12, 2019: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant the following information:

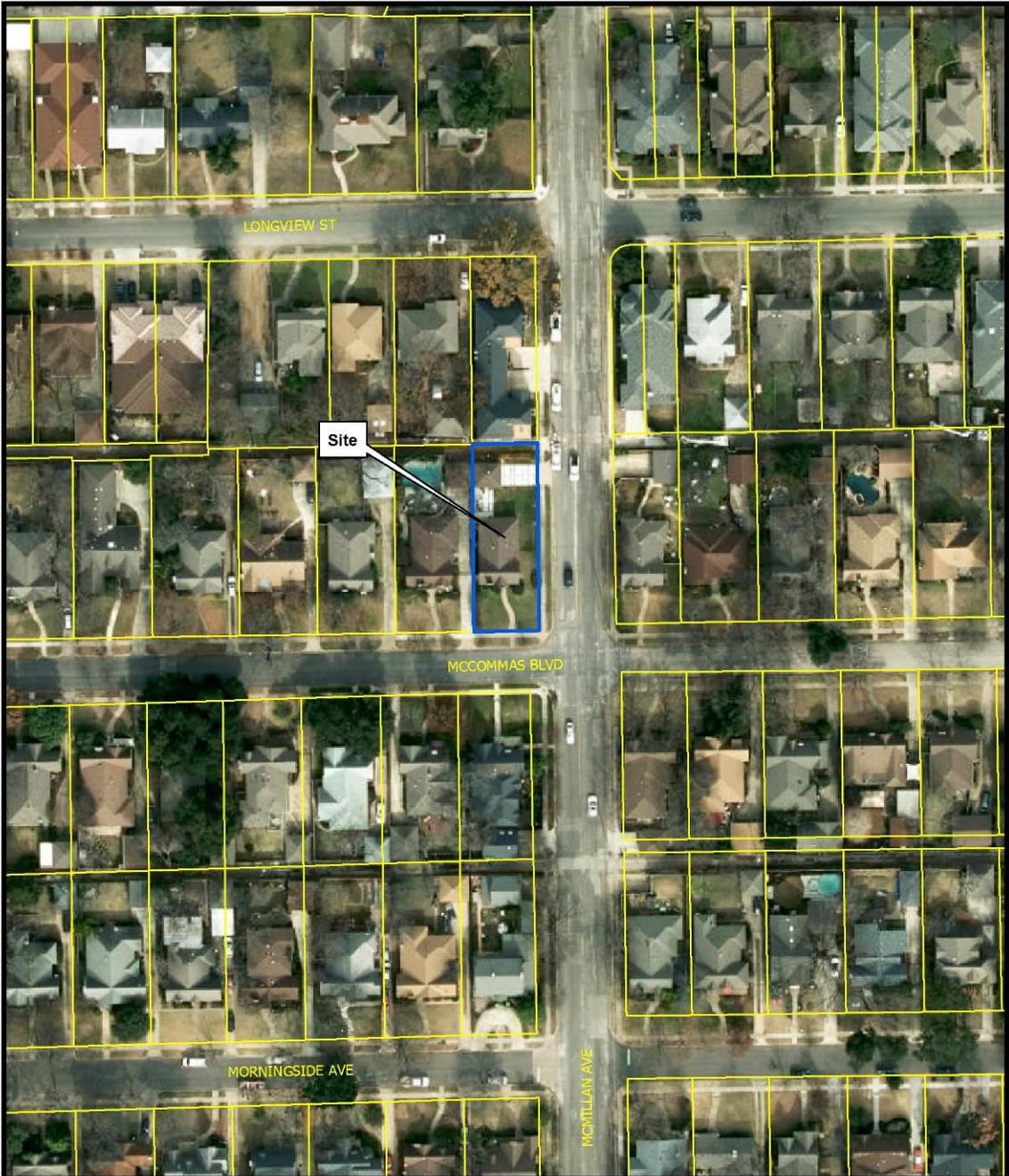
- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the August 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> 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.”

August 28, 2019: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

September 3, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Senior Engineer, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the Board.

September 5, 2019: The Sustainable Development Department Senior Engineer has submitted a review comment sheet and related document (see Attachment B). The review comment sheet is marked “recommends denial” with the following additional comments: “City installed bike lanes with buffers on McMillan Avenue in 2015 based on its connectivity and pedestrian activity on existing 4-foot sidewalk. (Attached); compromised visibility by fence affects pedestrian and bicyclists that do not anticipate vehicles backing out of the driveway”.





1:1,200

# AERIAL MAP

Case no: BDA189-094

Date: 8/15/2019

Dear Board of Adjustment Members,

Thank you for your time and consideration with respect to my application for an exception to the visibility triangles on both sides of my driveway. Understanding your recommendation needs to be fact based, please consider the following as background and support of the fact that this exception would not create a safety or traffic hazard.

**How we got here:** My wife and I purchased our home at 5451 McCommas Blvd on February 15th, 2019. In April we hired a highly rated local fence "contractor" to replace the existing fence (which was presumably in place for decades). The fence contractor asserted that (1) he would handle permitting and (2) he had an active contractor's license. We later learned he did not have an active license, nor did he pull permits.

**Support for an exception:** The fence has the same footprint as the replaced fence and is in similar placement as other fences commonly found throughout my neighborhood. Of the twenty-seven residences in the Greenland Hills neighborhood with driveway entrances on McMillan Ave, twenty residences (74%) have fences located in the visibility triangle adjacent to their driveways. Further, in a survey of all neighbors within 200 feet of my residence, no one was aware of any accidents, mishaps, or close calls caused by the fence located at my residence (current or prior) or any nearby fences in similar placement.

**Lessons learned:** As first-time homebuyers, this has been a huge learning lesson. We have worked diligently with city team members while considering options and throughout the application process. Our desire to work with city planning and the conservation district has been demonstrated by our recent submission and approval of a work review for another project. Going forward, we will be sure to consult the Sustainable Development & Construction department for all future projects and prior to entrusting any future contractors.

We are thankful for the guidance and support received from city staff thus far and appreciate your time and consideration.

Best,

Jeff Crosson  
*jeffwcrosson@gmail.com*  
972-455-6471

REVIEW COMMENT SHEET  
BOARD OF ADJUSTMENT  
HEARING OF SEPTEMBER 16, 2019 (C)

Has no objections

Has no objections if certain conditions  
are met (see comments below or attached)

Recommends denial  
(see comments below or attached)

No comments

BDA 189-091 (SL)

BDA 189-092 (SL)

BDA 189-094 (SL)

BDA 189-099 (SL)

COMMENTS:

**City installed bike lanes with buffers on  
McMillian Avenue in 2015 based on its  
connectivity and pedestrian activity on  
an existing 4-foot sidewalk. (Attached)**

**Compromised visibility by fence affects  
pedestrians and bicyclists that do not  
anticipate vehicles backing out of the  
driveway.**

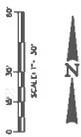
David Nevarez, P.E., PTOE, SDC-Engineering

Name/Title/Department

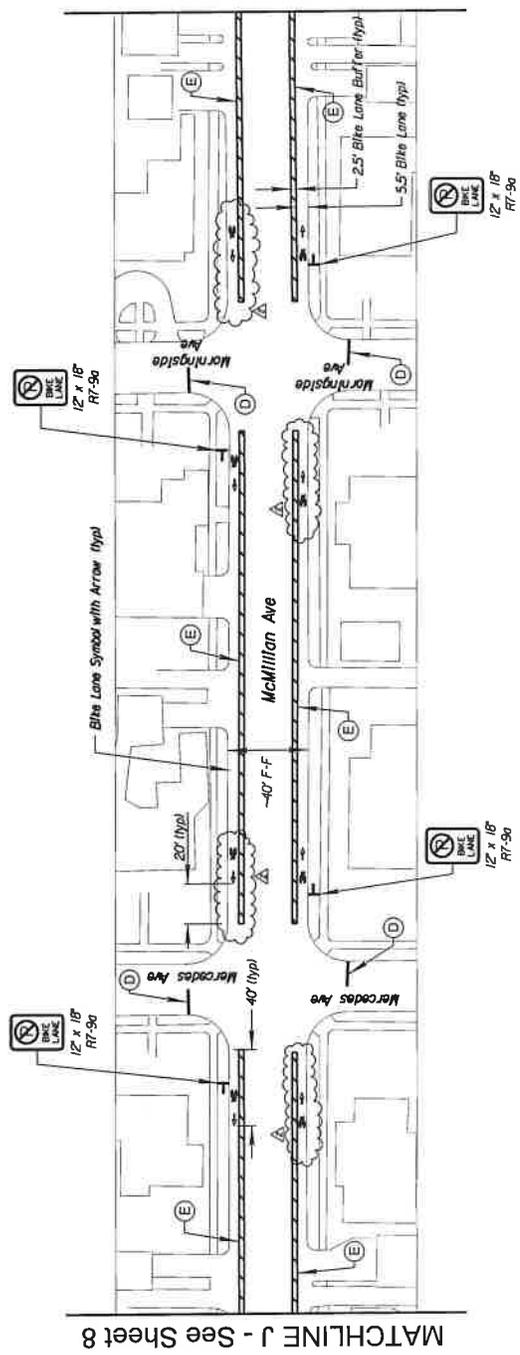
September 5, 2019

Date

Please respond to each case and provide comments that justify or elaborate on your response. Dockets distributed to the Board will indicate those who have attended the review team meeting and who have responded in writing with comments.

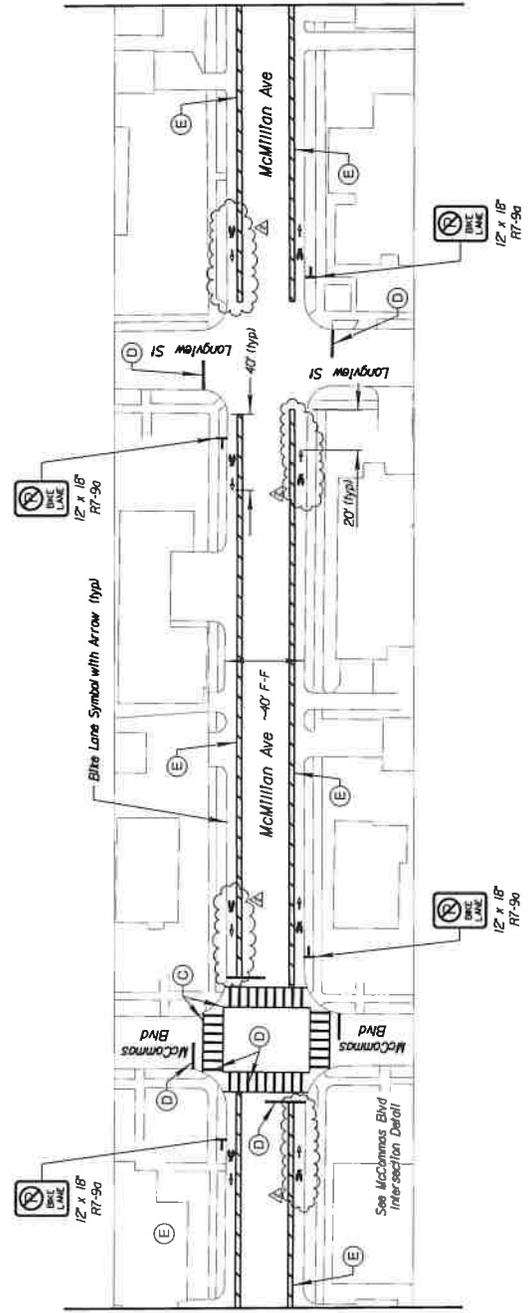


MATCHLINE K



MATCHLINE J - See Sheet 8

MATCHLINE L - See Sheet 10



- Reflective Pavement Markings:
- (A) RW 4" (SLD)
  - (B) RW 4" (DOT) 2" - 6" GAP
  - (C) RW 6" (SLD)
  - (D) RW 18" (SLD)
  - (E) RW 4" (BIKE LANE BUFFER) See Bike Lane Buffer Detail



CITY OF DALLAS, Texas - Department of Public Works  
 Transportation Planning Division  
 1000 Marilla Street, Suite 1008 Dallas, TX 75208

**McMILLIAN AVE  
 (SHEET 9 OF 10)**

BIKE LANE PLAN  
 N. HENDERSON AVE TO ELLSWORTH AVE  
 DEPARTMENT OF PUBLIC WORKS

DESIGN	DRAWN	DATE	SCALE	NOTES	FILE	NO.
ARH	ARH					XXXX

QUANTITIES THIS SHEET

ITEM	UNIT	NO.
Bike Symbol Only pre-ormed thermoplastic	EA	16
Bike Symbol Only prep and seal	EA	16
Bike Lane 6" Vertical Arrow pre-ormed thermoplastic	EA	16
Bike Lane 6" Vertical Arrow prep and seal	EA	16
RT-90 signage	EA	8
4" white pavement marking	LF	4457
6" white pavement marking	LF	235
18" white pavement marking	LF	468

- NOTES:
- To the extent possible, longitudinal crosswalk markings shall be centered in travel lanes and along lane lines to avoid vehicle wheel paths.
  - All signage shall be field located.
  - In locations where vegetation (grass) encroaches into pavement joint and/or gutter, herbicide shall be applied to eliminate such vegetation and provide a clear path for new bicycle lane.
  - Unless otherwise indicated, shared lane marking location dimensions are given to the vertex of each marking's first chevron.

2. Rev. #2 by A. Haire, 22 April 2015  
 Replaced dashed stripe at bus stops with solid stripes.



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 189-094

Data Relative to Subject Property:

Date: 6-7-19

Location address: 5451 McCommas Blvd. Dallas Tx 75206 Zoning District: CD-9

Lot No.: 1 Block No.: C/2915 Acreage: .165 Census Tract: 3.00

Street Frontage (in Feet): 1) 50' 2) 144' 3) 4) 5)

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Shelby Lee I. Porter and Jeffrey W. Crosson II

Applicant: Jeffrey W. Crosson II Telephone: (714) 227-3584

Mailing Address: 5451 McCommas Blvd Dallas Tx 75206 Zip Code: 75206

E-mail Address: jeffwrosson@gmail.com

Represented by: Jeffrey W. Crosson II Telephone: (714) 227-3584

Mailing Address: 5451 McCommas Blvd Dallas Tx 75206 Zip Code: 75206

E-mail Address: jeffwrosson@gmail.com

Affirm that an appeal has been made for a Variance, or Special Exception X, of the 20' x 20' visibility triangle located at both sides of the driveway.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

The fence is in similar placement as other fences commonly found throughout my neighborhood.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

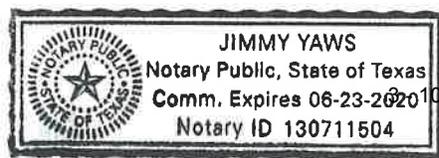
Before me the undersigned on this day personally appeared Jeffrey W Crosson II (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 5 day of JUNE, 2019

(Rev. 08-01-11)



[Signature] Notary Public in and for Dallas County, Texas

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

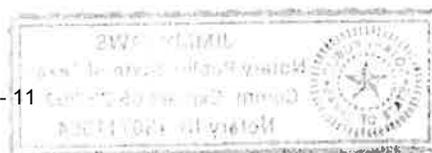
I hereby certify that JEFF CROSSON

did submit a request for a special exception to the visibility obstruction regulations  
at 5451 McCommas Blvd.

BDA189-094. Application of JEFF CROSSON for a special exception to the visibility obstruction regulations at 5451 MCCOMMAS BLVD. This property is more fully described as Lot 1, Block C/2915, and is zoned CD-9, which requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a single family residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation.

Sincerely,

*Philip Sikes*  
Philip Sikes, Building Official





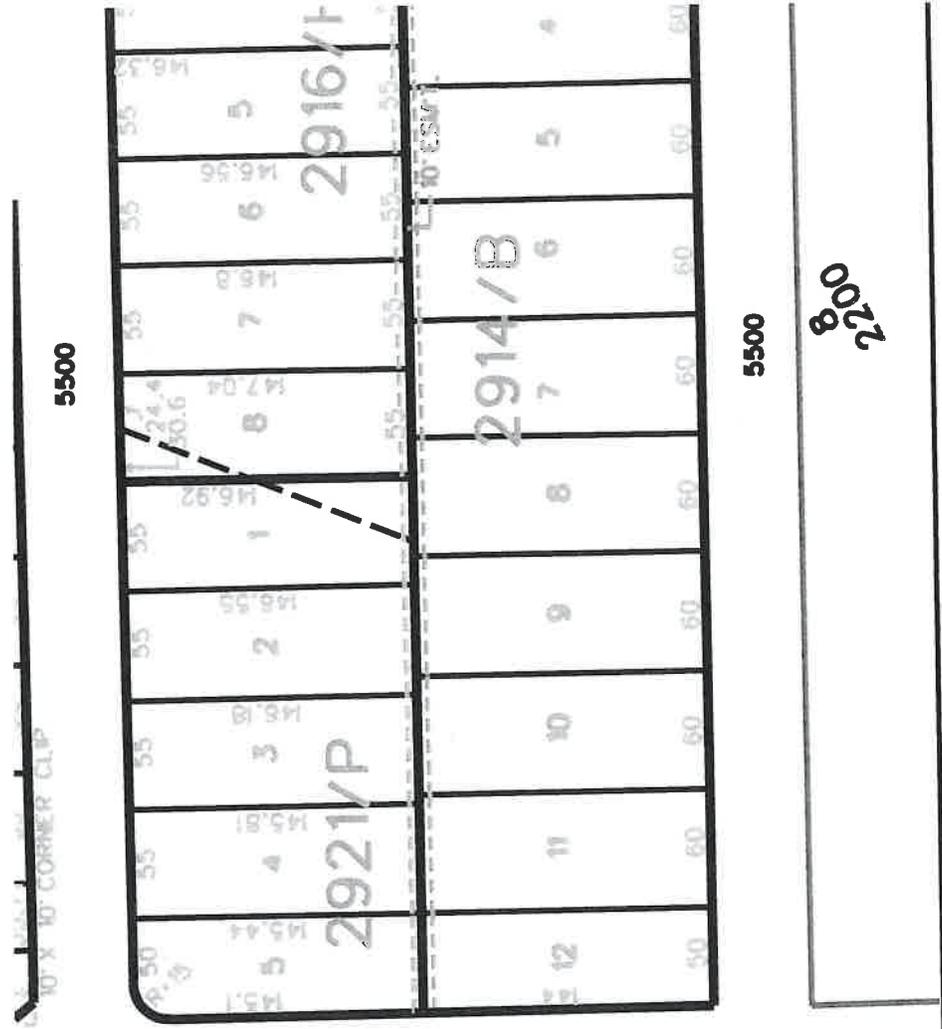
Printed: 4/30/2019

### Legend

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay                |
| Peak's Branch        | SPSP Overlay                   | MD Overlay            | Escarment Overlay          |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)





2200  
800

2206  
101

GREENLAND

*JK.*

# 5451 McCommas Blvd. – Fence Site Plan

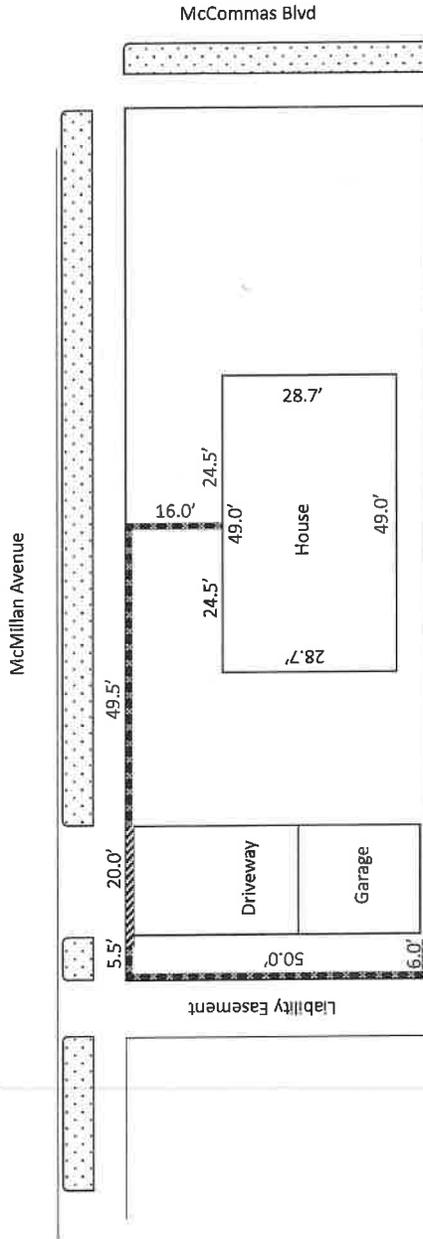


\*\*\*Reduced Version\*\*\*

Scale  
1" = 20'

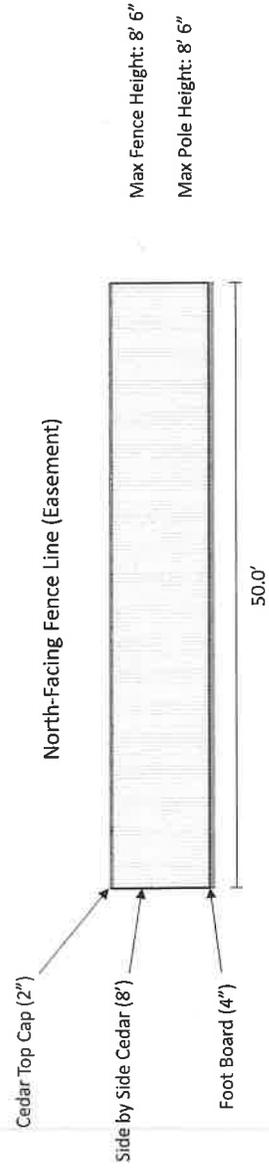
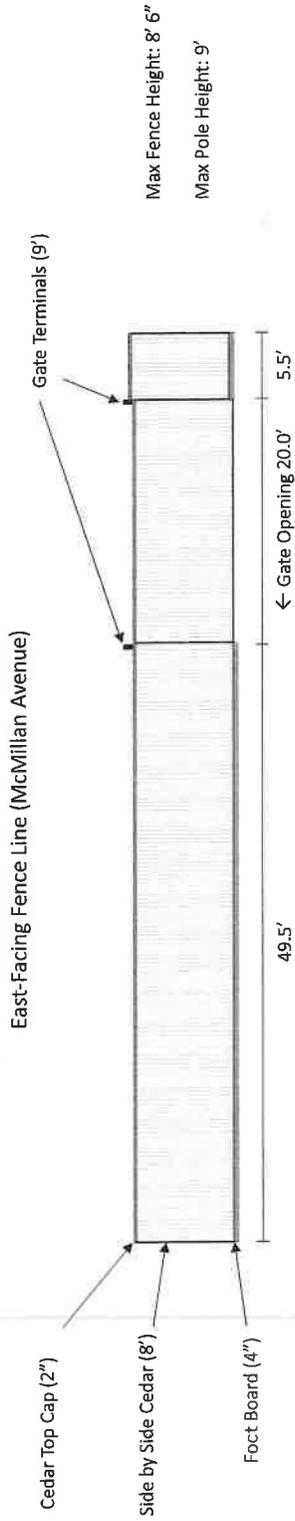
Fence

Gate

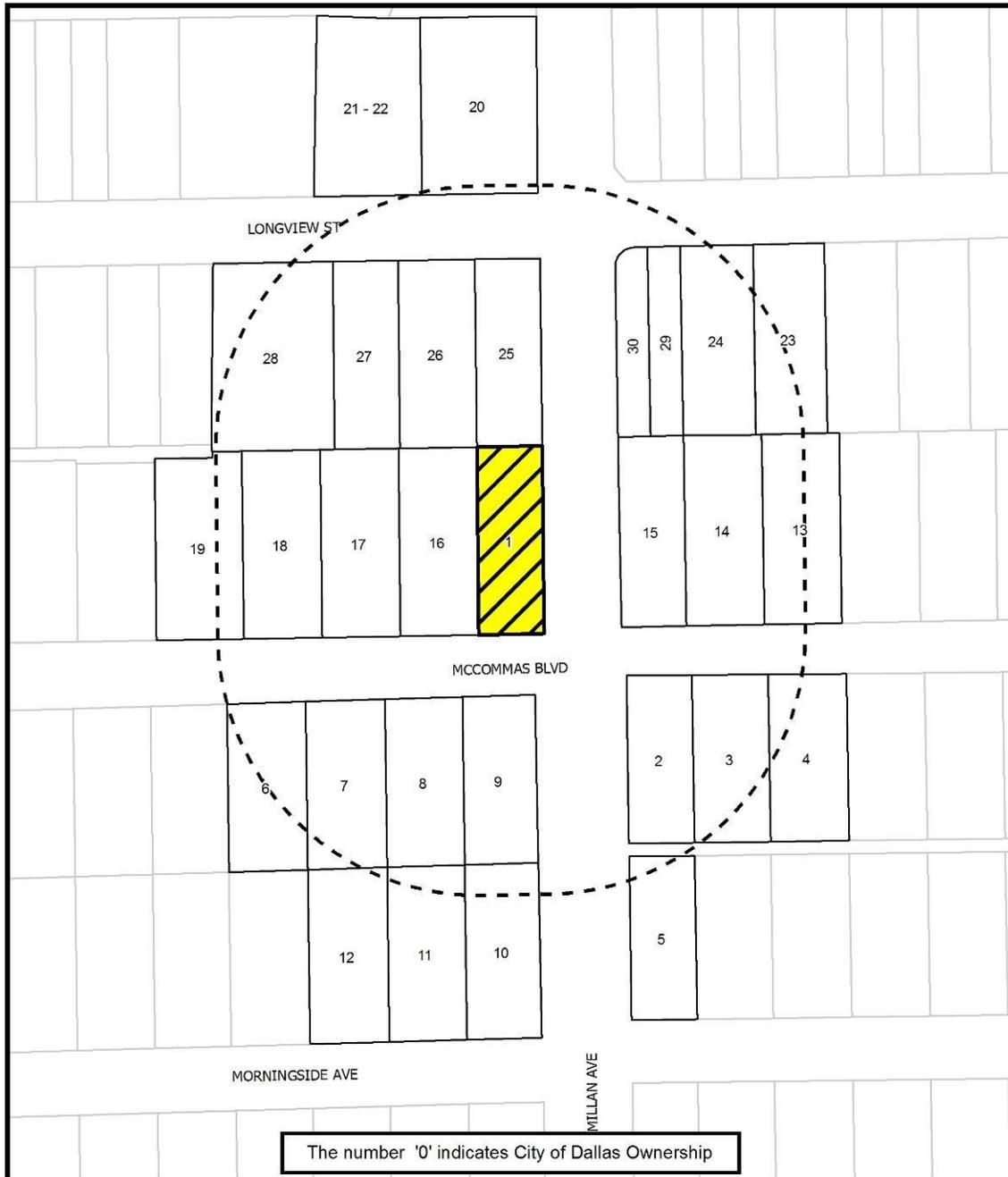


# 5451 McCommas Blvd. – Fence Site Plan Elevation Drawing

\*\*\*Reduced Version\*\*\*



\*\*Poles Face Inward



 1:1,200	<h2>NOTIFICATION</h2>	Case no: <u>BDA189-094</u>
	<div style="display: flex; justify-content: space-between;"> <div style="border: 1px solid black; padding: 2px;">200'</div> <div>AREA OF NOTIFICATION</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="border: 1px solid black; padding: 2px;">30</div> <div>NUMBER OF PROPERTY OWNERS NOTIFIED</div> </div>	Date: <u>8/15/2019</u>

## *Notification List of Property Owners*

***BDA189-094***

***30 Property Owners Notified***

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	5451 MCCOMMAS BLVD	SOTO BU
2	5502 MCCOMMAS BLVD	BROWN MARGARET &
3	5506 MCCOMMAS BLVD	SATHRE DOUGLAS G
4	5510 MCCOMMAS BLVD	OSTER ELEANOR MARIE &
5	5503 MORNINGSIDE AVE	PRATT ANDREW & PAIGE
6	5438 MCCOMMAS BLVD	THOMAS HENRY JAY
7	5440 MCCOMMAS BLVD	FERNANDEZ CRISTINA
8	5446 MCCOMMAS BLVD	MELTON ANDREW GRAVES & KATHRYN C
9	5450 MCCOMMAS BLVD	WHITE PATRICK DYLAN
10	5451 MORNINGSIDE AVE	COURTNEY MARK E & LOUWANE L
11	5447 MORNINGSIDE AVE	HAMMANN MRS ALLETAH W
12	5443 MORNINGSIDE AVE	JMD9 PROPERTIES LLC
13	5511 MCCOMMAS BLVD	CHAMBERS JAMES J &
14	5507 MCCOMMAS BLVD	OSBOURNE WILLIAM A &
15	5503 MCCOMMAS BLVD	WILSON COLETTE OSBORNE
16	5447 MCCOMMAS BLVD	HERNANDEZ EDUARDO M &
17	5443 MCCOMMAS BLVD	GREGORY N EILEEN
18	5439 MCCOMMAS BLVD	ERVIN THOMAS J
19	5435 MCCOMMAS BLVD	KTX HOLDINGS LLC
20	5455 LONGVIEW ST	CORCORAN ANNA HOGG
21	5451 LONGVIEW ST	HANKINS HOLLY ANN
22	5449 LONGVIEW ST	MANUEL BEVERLY BUSCH
23	5510 LONGVIEW ST	TGHM PROPERTIES LP
24	5506 LONGVIEW ST	ARISTA JOHNNY JOE SR &
25	5456 LONGVIEW ST	HANNABURY SHANE
26	5450 LONGVIEW ST	GASPARD JAMES L W

08/15/2019

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
27	5444 LONGVIEW ST	BRADSHAW KEITH
28	5442 LONGVIEW ST	DAWSON ROBERT E
29	5502 LONGVIEW ST	CATE CHRISTOPHER M &
30	5500 LONGVIEW ST	SLOAN KATHLYN D

**FILE NUMBER:** BDA189-099(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Dallas Cothrum of Masterplan for a special exception to the fence standards regulations at 4554 Harrys Lane. This property is more fully described as Lot 4, Block E/5534, 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 6 foot 6 inch high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence standards regulations.

**LOCATION:** 4554 Harrys Lane

**APPLICANT:** Dallas Cothrum of Masterplan

**REQUEST:**

A request for a special exception to the fence standards regulations related to height of 2' 6" is made to construct and maintain an approximately 6' high fence (2' 4" high masonry base with 3' 8" high open wrought iron fence atop), approximately 6' high masonry columns, an approximately 8' high vehicular entry gate, and an approximately 5.5' high pedestrian gate to be located in the site's 40' front yard setback on a site being 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: R-1ac(A) (Single family district 1 acre)  
North: R-1ac(A) (Single family district 1 acre)  
South: R-1ac(A) (Single family district 1 acre)  
East: R-1ac(A) (Single family district 1 acre)  
West: R-1ac(A) (Single family district 1 acre)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA078-117, Property at 4555 Harrys Lane (the lot to the north of the subject site)

On October 13, 2008, the Board of Adjustment Panel C granted requests for special exceptions to the fence and visual obstruction regulations, and imposed the following condition: Compliance with the submitted revised elevation/partial site plan document and revised full site plan is required.

The case report stated the requests were made to complete and maintain a 4' 6" high combination open wrought iron fence (with an approximately 2' high stone base) with approximately 5' high stone columns; two arched 6' 7" high open wrought iron vehicular gates with 7' 6" high stone columns (with 12" high light fixtures atop); and an 8' 6" high pedestrian gate flanked by 6' – 7' 8" high curved solid stone wing walls (each at approximately 10' in length) in the site's 40' front yard setback along Harrys Lane, and in the four 20' visibility triangles at the drive approaches into the site from Harrys Lane.

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the fence standards regulations related to height of 2' 6" focuses on constructing and maintaining an approximately 6' high fence (2' 4" high masonry base with 3' 8" high open wrought iron fence atop), approximately 6' high masonry columns, and an approximately 8' high vehicular entry gate, and an approximately 5.5' high pedestrian gate to be located in the site's 40' front yard setback on a site being 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 site is located at the southwest corner of Harrys Lane and Welch Road and has one front yard setback on Harrys Lane.
- The submitted site plan/elevation shows the proposed fence that would exceed 4' in height is an approximately 6' high fence (2' 4" high masonry base with 3' 8" high open wrought iron fence atop), approximately 6' high masonry columns, and an approximately 8' high vehicular entry gate, and an approximately 5.5' high pedestrian gate.
- The following additional information was gleaned from the submitted site plan/elevation:
  - The proposal is represented as being approximately 190' in length parallel to the street, and about 40' 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 approximately on the front property line, and approximately 13' from the pavement line.
- The Board of Adjustment Chief Planner/Board Administrator conducted a field visit of the site and surrounding area and noted two other fences that appeared to be above 4' in height located in front yard setback. One fence noted was located immediately north of the subject site - an approximately 4' 6" high combination open wrought iron fence with an approximately 2' high stone base that appears to be a result of a fence special exception granted by the Board in 2008 (see the "Zoning/BDA History" section of this case report for further details). The other fence noted was located immediately east of the subject site - an approximately 6' high open picket/rod fence with no recorded BDA history.
- As of September 6, 2019, one letter had been submitted in support of the request, and two letters had been submitted opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 6' 6" in height) will not adversely affect neighboring property.
- Granting this special exception of 2' 6" with a condition imposed that the applicant complies with the submitted site plan/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 this document.

**Timeline:**

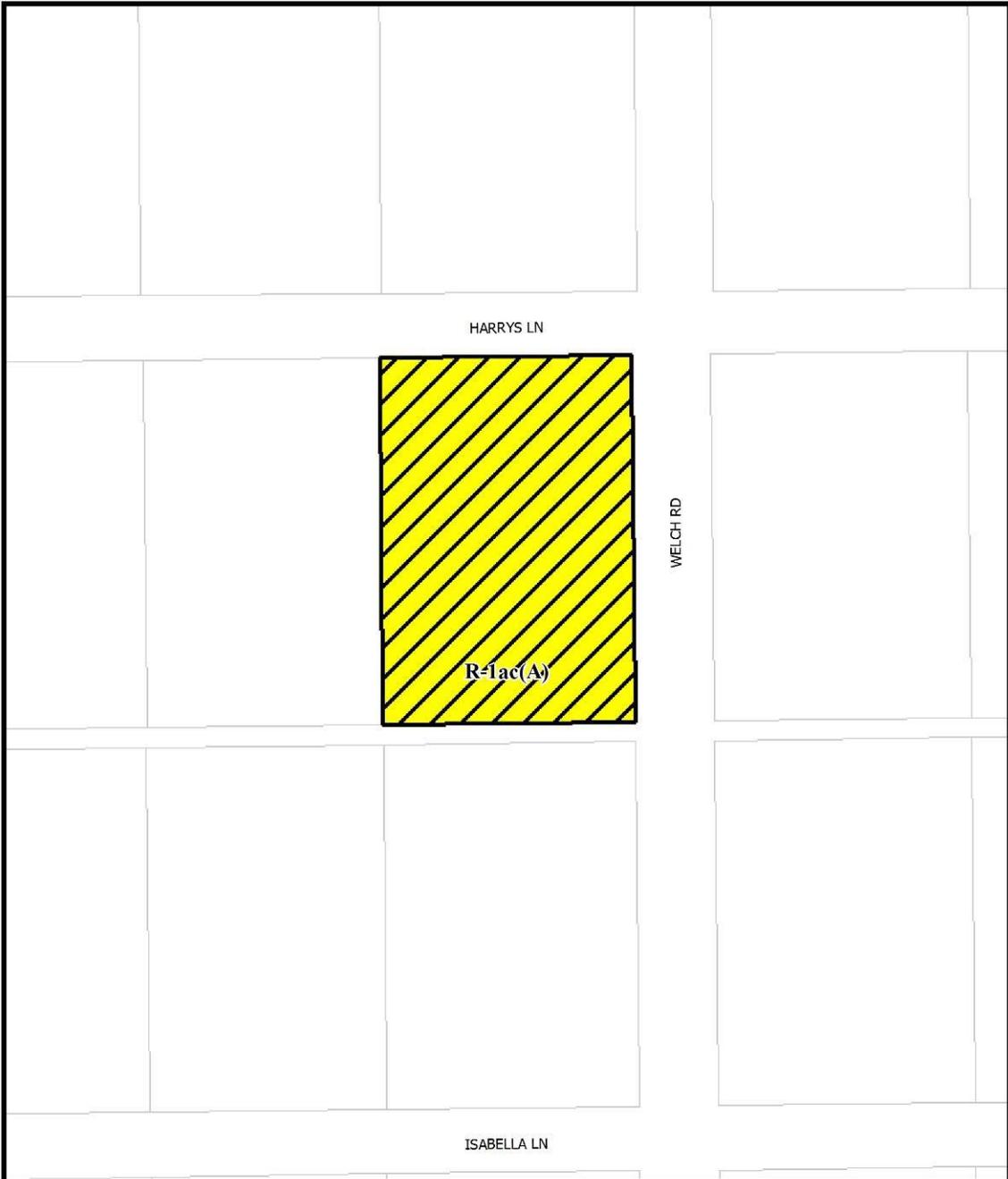
- July 2, 2019: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 12, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 12, 2019: The 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 August 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> 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."

September 2, 2019: The Board of Adjustment Chief Planner/Board Administrator amended the application given emails he had received from the original applicant and the newly designated applicant.

September 3, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Senior Engineer, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the Board.

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

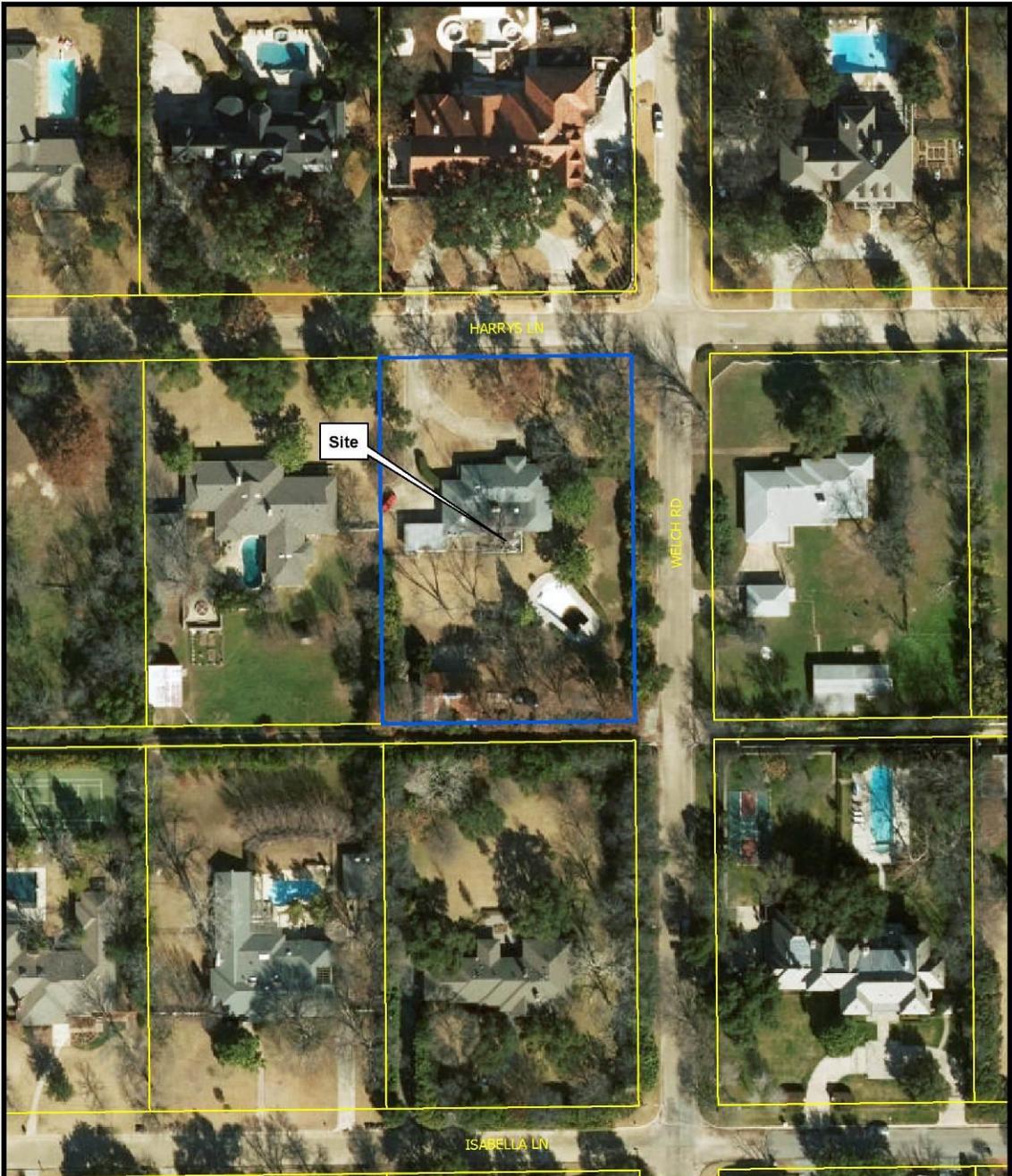


1:1,200

# ZONING MAP

Case no: BDA189-099

Date: 8/15/2019



1:1,200

# AERIAL MAP

Case no: BDA189-099

Date: 8/15/2019



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 189-099

Date: 7-2-19

Data Relative to Subject Property:

Location address: 4554 Harry Lane Zoning District: R-1AC(A)

Lot No.: 4 Block No.: E/5534 Acreage: 1.22 acres Census Tract: 76.01

Street Frontage (in Feet): 1) 196 ft 2) 280 ft 3) 4) 5)

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Marksc0 LLC

Applicant: Rob Baldwin, Baldwin Associates Telephone: 214-824-7949

Mailing Address: 3904 Elm Street Suite B Dallas TX Zip Code: 75226

E-mail Address: rob@baldwinplanning.com

Represented by: Rob Baldwin, Baldwin Associates Telephone: 214-824-7949

Mailing Address: 3904 Elm Street Suite B Dallas TX Zip Code: 75226

E-mail Address: rob@baldwinplanning.com

Affirm that an appeal has been made for a Variance \_\_, or Special Exception X, of fence height of 2'6" to allow a fence 6'6" tall in a required front yard setback

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason: The proposed decorative fence will not negatively impact surrounding properties. Other properties in the vicinity also have front yard fences that exceed 4'.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

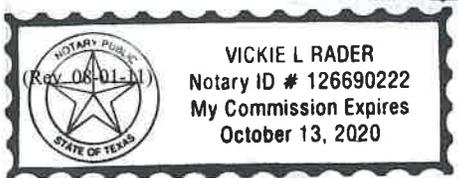
Affidavit

Before me the undersigned on this day personally appeared Robert Baldwin (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 2nd day of July 2019



[Signature] Notary Public in and for Dallas County, Texas

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

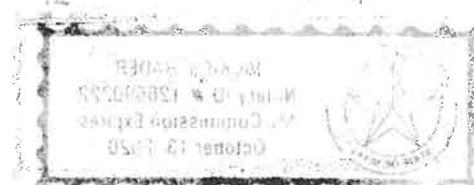
I hereby certify that BALDWIN ASSOCIATES

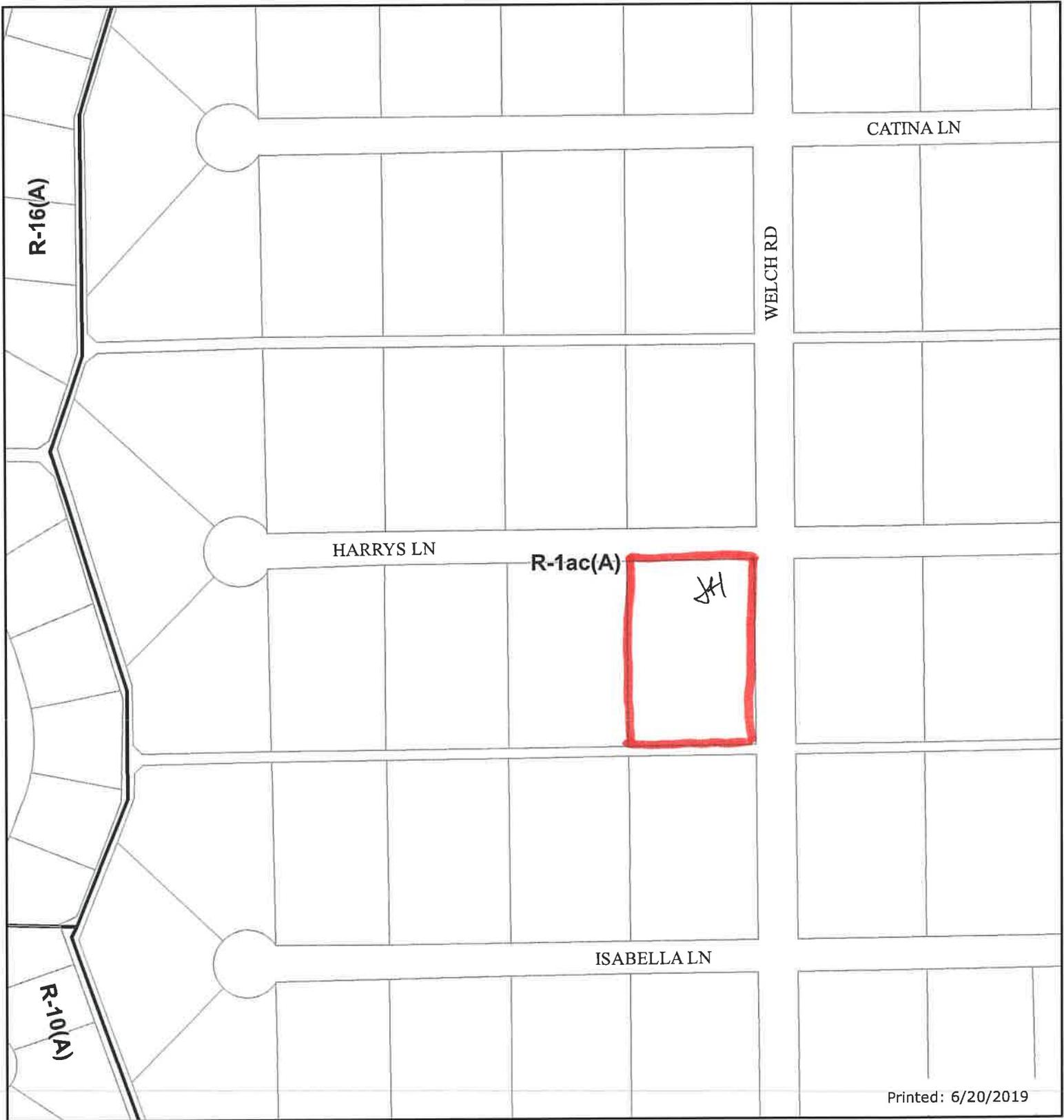
did submit a request for a special exception to the fence height regulations  
at 4554 Harrys Lane

BDA189-099. Application of BALDWIN ASSOCIATES for a special exception to the fence height regulations at 4554 HARRYS LN. This property is more fully described as Lot 4, Block E/5534, 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 a 6 foot 6 inch high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence regulations.

Sincerely,

*Philip Sikes*  
Philip Sikes, Building Official





Printed: 6/20/2019

### Legend

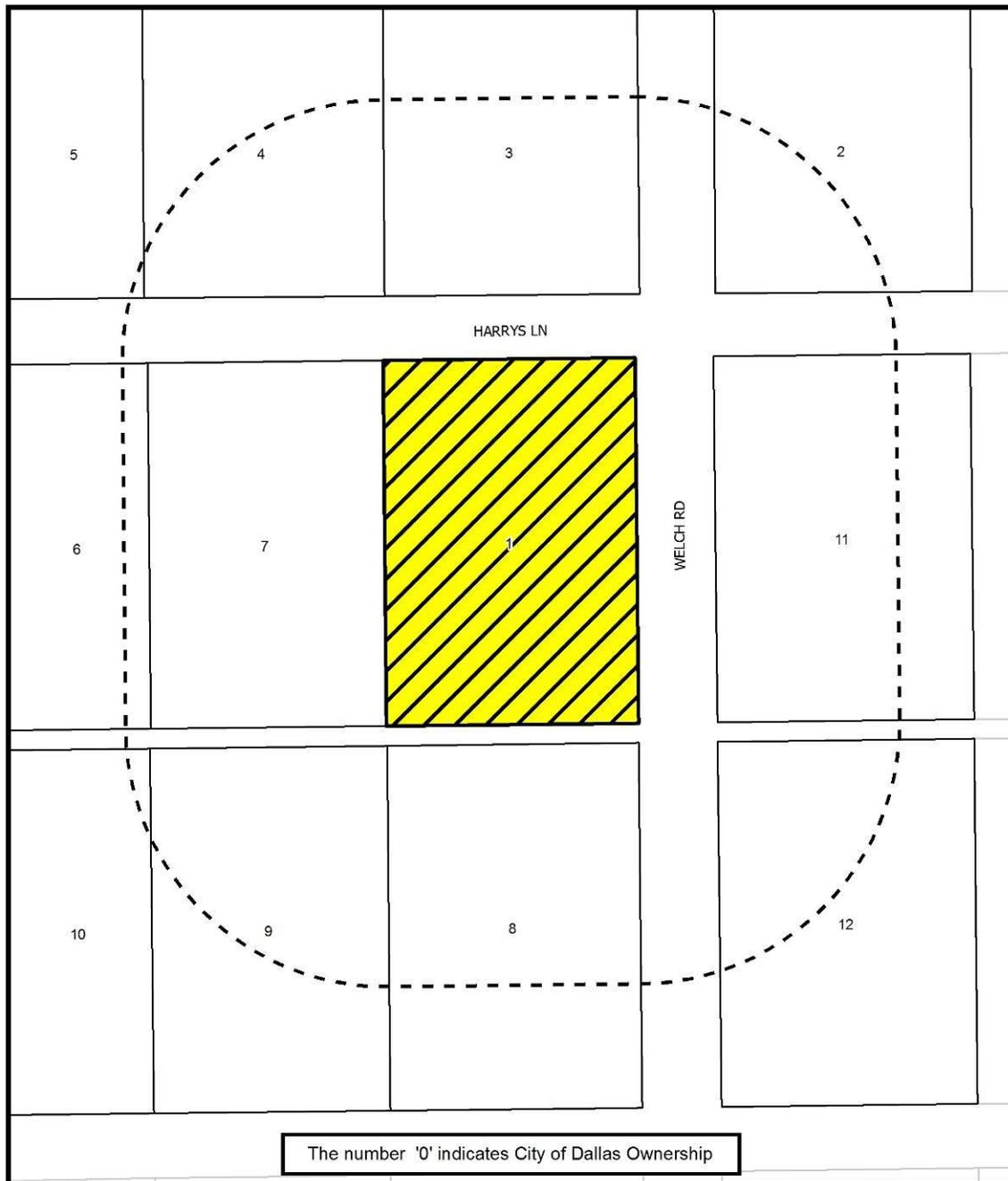
- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay                |
| Peak's Branch        | SPSP Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

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 1:1,200	<b>NOTIFICATION</b>		Case no: <b>BDA189-099</b>
	<div style="border: 1px solid black; padding: 2px; display: inline-block;">200'</div> AREA OF NOTIFICATION <div style="border: 1px solid black; padding: 2px; display: inline-block;">12</div> NUMBER OF PROPERTY OWNERS NOTIFIED	Date: <b>8/15/2019</b>	

## *Notification List of Property Owners*

***BDA189-099***

### ***12 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	4554 HARRYS LN	MARKSCO LLC
2	4609 HARRYS LN	GOLDSTEIN ROBERT &
3	4555 HARRYS LN	WILSON DALE R & TIFFANY SIMAYS
4	4545 HARRYS LN	WHEELER KAREN &
5	4525 HARRYS LN	COURIE ELI & SHERRI L
6	4524 HARRYS LN	ROSENTHAL MICHAEL A &
7	4544 HARRYS LN	SPARKS MARC A
8	4563 ISABELLA LN	BLACK STUART B & JANE A H
9	4545 ISABELLA LN	4545 ISABELLA LANE LLC
10	4525 ISABELLA LN	HUNT SHARRON LYNNE
11	10580 WELCH RD	GITELMAN AARON S & MARY GRIMES LIV TR THE
12	4611 ISABELLA LN	DURHAM CLARK &