

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
TUESDAY, APRIL 20, 2021**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Vice-Chair- regular member, Lawrence Halcomb, regular member, Jay Narey, regular member, and Sarah Lamb, regular member

MEMBERS ABSENT FROM BRIEFING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Anna Holmes, Asst. City Atty., Oscar Aguilera, Senior Planner, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, Charles Trammell, Development Code Specialist, Neva Dean, Assistant Director, and Kris Sweckard, Director.

MEMBERS PRESENT AT HEARING: Cheri Gambow, Vice-Chair- regular member, Lawrence Halcomb, regular member, Jay Narey, regular member, and Sarah Lamb, regular member

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Anna Holmes, Asst. City Atty., Oscar Aguilera, Senior Planner, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, Charles Trammell, Development Code Specialist, Phil Erwin, Arborist, Neva Dean, Assistant Director, and Kris Sweckard, Director.

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 20, 2021** docket.

1:00 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel A, March 16, 2021 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: April 20, 2021

MOTION: Lamb

Approval of the Board of Adjustment Panel A, March 16, 2021 public hearing minutes.

SECONDED: Halcomb

AYES: 4 – Gambow, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-FW2

BUILDING OFFICIAL'S REPORT: Application of Gregory S. Bowden, for a special exception to the prohibited fence materials regulations and for special exceptions to the visibility obstruction regulations at 819 Rockwood Street.

LOCATION: 819 Rockwood Street

APPLICANT: Gregory S. Bowden

REQUESTS:

The applicant is requesting a fee waiver for a special exception to the to the prohibited fence materials regulations and to the visibility obstruction regulations. The fee waiver is requested to maintain an eight-foot-tall, corrugated metal fence fronting the alley.

STANDARD FOR A FEE WAIVER:

Section 51A-1.105(b)(6) of the Dallas Development Code specifies the board of adjustment may waive the filing fee if 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 miscellaneous docket for predetermination. If the issue is placed on the miscellaneous docket, the applicant may not apply to the merits of the request for a waiver have been determined by the board. In making this determination, the board may require the production of financial documents.

STAFF RECOMMENDATION:

The staff does not make a recommendation on a fee waiver request since the standard is whether the board finds that payment of the fee would result in substantial financial hardship to the applicant.

BOARD OF ADJUSTMENT ACTION: April 20, 2021

APPEARING IN FAVOR: Gregory Bowden 819 Rockwood St. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment **grant** the request to waive fees to be paid in association with a request for special exceptions to the prohibited fence materials regulations and to visibility obstruction regulations at 819 Rockwood Street because our evaluation of the testimony shows that payment of the fee would result in substantial financial hardship for this applicant.

SECONDED: Narey

AYES: 4 – Gambow, Lamb, Halcomb, Narey

NAYS: 0 –

MOTION PASSED: 4 - 0 (unanimously)

FILE NUMBER: BDA201-033(OA)

BUILDING OFFICIAL'S REPORT: Application of La Sierra Planning Group for a variance to the front yard setback regulations at 5539 Belmont Avenue. This property is more fully described as Lot 8, Block 2/2066, and is zoned an R-7.5(A) Single Family District, which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a single-family residential structure and provide a six-foot eight-inch front yard setback, which will require an 18-foot four-inch variance to the front yard setback regulations.

LOCATION: 5539 Belmont Avenue

APPLICANT: Santos Martinez of La Sierra Planning Group

REQUEST:

A request for a variance to the front yard setback regulations on Summit Avenue is made to construct and maintain a two-story single-family structure with approximately 4,032 square feet on a site that is undeveloped. A portion of the proposed structure is to be located six-feet eight-inches from one of the site's two front property lines or 18-feet four-inches into the 25-foot required front yard setback.

STANDARD FOR A VARIANCE:

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

- (A) not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;

- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- compliance with the submitted site plan is required.

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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-foot front yard setbacks when most lots in this zoning district have one front yard setback. These restrictions make the subject property incapable of being developed in a manner commensurate with the development upon other parcels of land with the same zoning.
- Staff concluded that the applicant has shown by submitting a document (**Attachment A**) indicating among other things that the total home size of the proposed home on the subject site at approximately 4,032 square feet is commensurate to 25 other homes ranging in size from 2,912 square feet to 4,462 square feet within the same R-7.5(A) District.

BACKGROUND INFORMATION:

Zoning:

- Site: R-7.5(A) (Single family district)
- North: Conservation District No. 15
- South: R-7.5(A) (Single family district)
- East: MF-3(A) (Multifamily district)
- West: R-7.5(A) (Single family district)

Land Use:

The subject site is undeveloped. The areas to the north, west, and south are developed with single family uses and multifamily uses. The property to the east is developed with multifamily use.

Zoning/BDA History:

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

GENERAL FACTS /STAFF ANALYSIS:

The property is currently undeveloped and located in an R-7.5(A) Single Family District which requires a minimum front yard setback of 25 feet. This request for an 18-foot four-inch variance to the front yard setback requirement focuses on constructing and maintaining a two-story single family structure with a total of approximately 4,032 square feet, part of which is to be located six-feet eight-inches from one of the site's two front property lines along Summit Avenue; 18-foot four-inches into this 25-foot front yard setback.

The subject site is located at the northwest corner of Belmont Avenue and Summit Avenue. Regardless of how the structure is proposed to be oriented to front Belmont Avenue, the subject site has a 25-foot front yard setback along both street frontages. The site has a 25-foot front yard setback along Belmont Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25-foot front yard setback along Summit Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a five-foot side yard setback is required. However, the site's Summit Avenue frontage that would function as a side yard on the property is treated as a front yard setback nonetheless, to maintain the continuity of the front yard setback established by the lots to the north that are oriented to front east towards Summit Avenue.

The submitted site plan indicates the proposed structure is located approximately six-feet 10-inches from the Summit Avenue front property line. However, the request is for six-feet eight-inches from one of the site's two front property lines (Summit Avenue) or 18-foot four-inches into this 25-foot front yard setback.

According to DCAD records, the site is undeveloped.

The subject site is flat, rectangular (approximately 61 feet by 144 feet), and according to the submitted application is 0.20 acres (or 8,712 square feet) in area. The site is zoned an R-7.5(A) District where lots are typically 7,500 square feet in area. Most lots in the R-7.5(A) District have one 25-foot front yard setback, two five-foot side yard setbacks, and one five-foot rear yard setback. As noted, this site has two 25-foot front yard setbacks and two five-foot side yard setbacks. The submitted site plan represents that approximately 50 percent of the structure is located in the 25-foot Summit Avenue front yard setback. No variance would be necessary if the Summit Avenue frontage were a side yard since the site plan represents that the proposed home is six-feet 10-inches from the Summit Avenue property line which would exceed the typical five-foot side yard setback for properties zoned an R-7.5(A) District.

The applicant has submitted a document indicating among other things that the total home size of the proposed home on the subject site is approximately 4,032 square feet and stating that since 2006, all new single-family construction has been two stories. The applicant claims that of the 25 new homes, the size ranges from 2,912 square feet to 4,462 square feet. Four have pools, as well. Five of these new homes have outside living areas. The proposed construction on this property is within the commensurate floor area of recent construction. It should also be

noted that the proposed new home utilizes only 27 percent of the allowable 45 percent lot coverage.

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) Single Family District 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) Single Family District zoning classification.

If the board were to grant the variance request and impose the submitted site plan as a condition, the single-family structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located six-feet eight-inches from one of the site’s two front property lines along Summit Avenue; 18-feet four-inches into this 25-foot front yard setback.

Timeline:

February 23, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

March 4, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel A.

March 8, 2021: 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 March 30, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the April 9, 2021 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.”

March 26, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

April 2, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: April 20, 2021

APPEARING IN FAVOR: Santos Martinez 12 Tanager Terrace Angel Fire, NM 87710

APPEARING IN OPPOSITION: Gloria Eisenstadt 5528 Belmont Ave. Dallas, TX
Richard Sopp 5533 Belmont Ave. Dallas, TX

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 201-033, on application of La Sierra Planning Group, **grant** the 18-foot four-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Halcomb

AYES: 4 – Gambow, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION: Gambow

I move to adjourn the Panel A hearing.

SECONDED: Lamb

AYES: 4 - Gambow, Lamb, Halcomb, Narey

NAYS: 0 -

MOTION PASSED (unanimously): 4 - 0

2:31 P.M. Board Meeting adjourned for April 20, 2021

Cheryl Cumber

CHAIRPERSON

Jennifer Munoz

BOARD ADMINISTRATOR

LaTonia Jackson

BOARD SECRETARY

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