

BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE/6ES
TUESDAY, JULY 19, 2022

RECEIVED
2022 AUG 19 PM 12:18
CITY SECRETARY
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: David A. Neumann, Chair, regular member, Sarah Lamb, regular member, Dr. Emmanuel Glover, alternate member, Andrew Finney, alternate member and Thomas Fleming, alternate member

MEMBERS ABSENT FROM BRIEFING: Jay Narey, regular member, Lawrence Halcomb, regular member and Kathleen Frankford, regular member

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., Pamela Daniel, Senior Planner, LaTonia Jackson, Board Secretary, Sarah May, Chief Planner, Jason Pool, Senior Planner/Sign Code Specialist, David Nevarez, Senior Traffic Engineer

MEMBERS PRESENT AT HEARING: David A. Neumann, Chair, regular member, Sarah Lamb, regular member, Dr. Emmanuel Glover, alternate member, Andrew Finney, alternate member and Thomas Fleming, alternate member

MEMBERS ABSENT FROM HEARING: Jay Narey, regular member, Lawrence Halcomb, regular member and Kathleen Frankford, regular member

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., Pamela Daniel, Senior Planner, LaTonia Jackson, Board Secretary, Sarah May, Chief Planner, Jason Pool, Senior Planner/Sign Code Specialist, David Nevarez, Senior Traffic Engineer

9:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's July 19, 2022 docket.

11:24 A.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 June 21, 2022 Board of Adjustment Panel A Public Hearing Minutes

BOARD OF ADJUSTMENT ACTION: July 19, 2022

MOTION: Lamb

Approval of the June 21, 2022 Board of Adjustment Panel A Public Hearing Minutes

SECONDED: Finney

AYES: 5 – Lamb, Finney, Fleming, Glover, Neumann

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

BDA212-011(PD) 9077 Fairglen Dr.

REQUEST: Application of Kenneth Brunkenhoefer requesting an extension to obtain building permits for the variance to the side yard setback regulations.

BOARD OF ADJUSTMENT ACTION: July 19, 2022

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 212-011, on application of Kenneth Brunkenhoefer, **grant** the extension to obtain building permits for the variance to the side yard setback regulations as requested by this applicant for 60 days.

SECONDED: Finney

AYES: 5 – Lamb, Finney, Fleming, Glover, Neumann

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-054(PD)

BUILDING OFFICIAL'S REPORT: Application of Amy E. Davis for a special exception to the single-family use regulations to construct and maintain an accessory dwelling unit (for rent) at 1106 N. Clinton Avenue. This property is more fully described as Lot 2 in City Block H/3792 and is zoned Subarea 2 within Conservation District No. 13, Kessler Park Conservation District, which will require a special exception to the single-family zoning use regulations.

LOCATION: 1106 N. Clinton Avenue

APPLICANT: Amy E. Davis

REQUESTS:

The applicant proposes to construct and maintain an accessory dwelling unit (for rent) proposed at two-stories with approximately 624 square feet of floor area on a site developed with a single-family dwelling.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE AN ACCESSORY DWELLING UNIT:

(i) The board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize a rentable accessory dwelling unit in any district when, in the opinion of the board, the accessory dwelling unit will not adversely affect neighboring properties.

(ii) If a minimum of one additional off-street parking space is not provided, the board shall determine if that will create a traffic hazard. The board may require an additional off-street parking space be provided as a condition of granting this special exception.

(iii) In granting this type of special exception, the board shall require the applicant to:

- (I) deed restrict the subject property to require owner-occupant on the premises; and
- (II) annually register the rental property with the city's single family non-owner occupied rental program.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when *in the opinion of the board*, the accessory dwelling unit will not adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

- Site: Subarea 2 within Conservation District No. 13
- North: Subarea 2 within Conservation District No. 13
- South: Subarea 2 within Conservation District No. 13
- East: Subarea 2 within Conservation District No. 13
- West: Subarea 2 within Conservation District No. 13

Land Use:

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

Zoning/BDA History:

There have been no recent related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The subject property zoned Subarea 2 within Conservation District No. 13. In this district, each lot may have only one primary dwelling unit and an accessory structure may contain one accessory dwelling unit. Additionally, an accessory dwelling unit (for rent) cannot exceed 25 percent of the maximum floor area of the main building. The proposed unit is 624-square-foot or 21.9 percent of the 2,844-square-foot floor area of the main structure, which is less than the required 25 percent floor area ratio of the main structure.

DCAD records indicate the following improvements for the property located at 1106 N. Clinton Avenue: "main improvement": a structure with 2,715 square feet of living area built-in 1925" and "additional improvements": a 440-square-foot detached garage, a 683-square-foot "detached quarters," and a 374-square-foot attached carport. The DCAD calculations includes an existing detached accessory structure which is the catalyst for this request. The applicant proposes to raze and reconstruct the accessory dwelling unit at a lesser square footage of approximately 624 square feet.

The property is rectangular in shape, flat, and according to the application, contains 0.1837 acres, or approximately 8,001 square feet in area. In Subarea 2 within Conservation District No. 13 the minimum lot size is 7,500 square feet.

The applicant has submitted evidence (**Attachment A**) which offers a timeline for the rebuild and conservation ordinance of the subject site.

As of July 8, 2022, staff has received no letters in support of the request and no letters in opposition to the request.

If the board were to grant the special exception to the single-family regulations to construct and maintain a two-story accessory dwelling unit (for rent), the Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to require owner-occupancy on the premises; and annually register the rental property with the city's single family non-owner-occupied rental program.

Timeline:

March 16, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

May 6, 2022: The Senior Planner 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 June 29th deadline to submit additional evidence for staff to factor into their analysis; and the July 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 9, 2022: The applicant submitted evidence (**Attachment A**) for consideration.

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Board of Adjustment Senior Planner, the Conservation Districts Senior Planner, the Transportation

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: Amy Davis 1106 N. Clinton Ave. Dallas, TX

APPEARING IN OPPOSITION: Roger Briggs 1100 N. Clinton Ave. Dallas, TX

MOTION: **Lamb**

I move that the Board of Adjustment, in request No. BDA 212-054, on application of Amy Davis, **grant** the request to construct and maintain an accessory dwelling unit on a site developed with a single family structure as a special exception to the single family use regulations requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring properties.

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.

The property must be deed restricted to require that the property owner reside in the main structure or the accessory dwelling unit if one dwelling unit is used as rental accommodations and annually register the rental property with the city's single family non-owner occupied rental program.

SECONDED: **Finney**

AYES: 5 – Lamb, Finney, Fleming, Glover, Neumann
NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

*****The original motion (4-1) by Finney was to grant that was seconded by Lamb, with Dr. Glover in opposition. The motion of approval was later reconsidered by Neumann and Lamb for the opposition to address the Board*****

FILE NUMBER: BDA212-060(JM)

BUILDING OFFICIAL’S REPORT: Application of Collin and Shannon Ray represented by Jeff Riddle for a special exception to the fence height regulations and a variance to the side yard setback regulations at 5400 Richard Avenue. This property is more fully described as Lot 1, Block 23/1943, and is zoned a CD No. 15, Vickery Place Conservation District, which limits the height of a fence in the side yard to six feet, requires side yard setback of five feet.

LOCATION: 5400 Richard Avenue

REPRESENTATIVE: Jeff Riddle

APPLICANTS: Collin and Shannon Ray

REQUEST:

The applicant proposes to construct an eight-foot-high solid cedar fence in a required side yard, which will require a two-foot special exception to the fence regulations, and to construct a single-family residential structure (pergola and deck) and provide a provide a zero-foot side yard setback, which will require a five-foot variance to the side yard setback regulations.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION (fence height):

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when *in the opinion of the board*, the special exception will not adversely affect neighboring property. The applicant provided evidence comparing the prospective solid fence on the secondary frontage of the corner lot, to eight other corner lots in the area with solid fences from six to eight feet-in-height on one of the two street frontages (**Attachment A**).

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.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
 - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (e) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval.

Rationale:

The applicant provided evidence (**Attachment B**) regarding the removal of shade trees necessitated after they were excessively trimmed from the power line area. The request to encroach into the side yard is specifically to replace the shade once provided by those trees. A certified arborist provided the recommendation to remove the trees for safety (limb failure) concerns. Additionally, staff concluded that the subject site is unique and different from most lots in CD No. 15 considering the height of the house, slight slope, and its restrictive lot area of 8,050 square feet. The applicant submitted evidence (**Attachments B and C**) describing the height of the house and slope created by that height, as well as comparing lot size and developable area within the immediate vicinity and the same zoning district. Per the comparative analysis, the average lot area is 519 square feet larger than the subject site. Thus, in analyzing the comparative properties the restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

BACKGROUND INFORMATION:

Zoning:

Site: Conservation District No. 15
North: Conservation District No. 15
South: Conservation District No. 15 and R-7.5(A) Single Family District
East: Conservation District No. 15
West: Conservation District No. 15

Land Use:

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

Zoning/BDA History:

1. **BDA212-023:** On June 22, 2022, Panel B denied a variance to the front yard setback regulations at 5253 Bonita Avenue (southwest of the site).
2. **BDA201-056:** On June 23, 2021, Panel B approved a variance to the floor area ratio for an accessory structure at 5434 Willis Avenue (northeast of the site).

GENERAL FACTS /STAFF ANALYSIS:

The subject site is developed with a single-family structure and zoned within CD No. 15, Vickery Place Conservation District. According to DCAD, the site is developed with a one-story, 2,276-square-foot structure erected in 1922. A deck area is noted with 120 square feet of area and a detached garage with 525 square feet. There are two main elements to this request, as noted below.

1. The applicant proposes to replace an existing six-foot-high solid wood privacy fence with an eight-foot-tall solid wood fence along the property line and removed from the visibility

triangle to improve visibility, which would require a two-foot special exception to be permitted.

CD No. 15 stipulates that a fence may not exceed six feet above grade when located in the required side yard. The existing six-foot-high solid wood privacy fence in disrepair along the side yard on Glencoe Street currently encroaches into the right-of-way and creates a visual obstruction at the visibility triangle at the alley corner to the southwest. The applicant proposes an eight-foot-tall solid wood fence along the property line and removed from the visibility triangle to improve visibility, which would require a two-foot special exception to be permitted.

A site plan provided with the application materials shows the fence proposed as an eight-foot-tall BOB (board-on-board) cedar fence along the lot line and obstructing the 20-foot visibility triangle at the southwest corner of Glencoe Street and the alleyway. However, the applicant decided to withdraw the visual obstruction request before notification. At the time of this report, a revised site plan was pending which would show the unobstructed visibility triangle. Overall, the site plan shows the solid fence following the property line, now removed from the right-of-way when compared to the survey in evidence (p. 4, **Attachment B**).

Staff conducted a field visit of the site and surrounding area and noticed other fences within a 200-foot radius of the property that seemed taller than four feet-in-height and solid in nature located in obvious side yards. The applicant provided evidence comparing the prospective solid fence on the secondary frontage of the corner lot, to eight other corner lots in the area with solid fences from six to eight feet-in-height on one of the two street frontages (**Attachment A**).

The applicant has the burden of proof in establishing that the special exception to the fence height regulation of up to two feet in the required side yard will not adversely affect neighboring properties.

As of July 8, 2022, staff has not received letters regarding this request.

2. The applicant proposes to replace the existing uncovered deck with a composite deck, outdoor kitchen, and two-tiered pergola structure for partial shade within the entire five-foot side yard setback along Glencoe Street.

Lots in CD No. 15 are a minimum of 7,500 square feet in area. Staff concluded that the subject site is unique and different from other corner lots in CD No. 15 considering the height of the house, slight slope, and its restrictive lot area of 8,050 square feet. The applicant submitted evidence (**Attachments B and C**) describing the height of the house and slope created by that height, as well as comparing lot size and developable area within the immediate vicinity and the same zoning district. Per the comparative analysis, the other properties ranged in lot area from 8,172 to 9,350 square feet. Overall, the subject site is an average of 519 square feet smaller than those other corner lots with the same zoning. Additionally, the CD zoning requires a different side yard setback for the east and west sides of a lot. The subject site fronts along Glencoe Street to the west, making the more restrictive side yard setback applicable to the existing deck area. Thus, in analyzing the comparative properties the restrictive area of the subject site and application of the most restrictive side yard setback ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

The 100-year-old layout of the property has included the shade provided over the existing deck area for decades. The applicant provided evidence (**Attachment B**) regarding the removal of shade trees necessitated after they were excessively trimmed from the power line area. The request to encroach into the side yard is specifically to replace the shade once provided by those trees. A certified arborist provided the recommendation to remove the trees for safety (limb failure) concerns.

A site plan submitted indicates the deck area is being replaced with composite material and expanded to now include an outdoor kitchen with a relocated entry from the house. The deck area and pergolas reach up to the fence, which is located along the property line. Elevation plans submitted depict a two-tiered pergola reaching a maximum height of about 12 feet would cover the new deck to replace the existing shade of trees which must be removed.

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 special exception and variance requests and impose the pending revised site plan as a condition, the proposed deck, outdoor kitchen, and two-tiered pergola structures located along the lot line and within the side yard setback along the Glencoe Street would be limited to what is shown on this document. The revised plan is also subject to staff review and any additional discovery or guidance may delay the request. Additionally, the applicant has the burden of proof in establishing how granting the special exception to allow the fence in the side yard will not adversely affect neighboring properties. Finally, no additional relief is provided with this request.

Timeline:

May 5, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents (**Attachment A**) which have been included as part of this case report.

May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

June 13, 2022: The Board Chief Planner emailed the representative the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the June 29th deadline to submit additional evidence for staff to factor into their analysis; and the July 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Chief Arborist, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

July 5, 2022: The representative provided evidence (**Attachments B and C**).

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: Jeffery Riddle 34 Bunker Hill Richardson, TX

APPEARING IN OPPOSITION: None.

MOTION: **Lamb**

I move that the Board of Adjustment in Appeal No. BDA 212-060 **hold** this matter under advisement until **August 16, 2022**.

SECONDED: **Fleming**

AYES: 5 – Lamb, Finney, Fleming, Glover, Neumann

NAYS: 0 –

MOTION PASSED: 5 - 0 (unanimously)

*****The first motion per Lamb and seconded by Glover to Deny without prejudice failed 2-3 with Neumann, Finney and Fleming in opposition. The second motion per Neumann and seconded by Fleming to Grant failed 3-2 with Lamb and Glover in opposition*****

FILE NUMBER: BDA212-064(PD)

BUILDING OFFICIAL’S REPORT: Application of Kimberly Martin represented by Alfredo Pena for a special exception to the single-family use regulations at 743 Bizerte Avenue. This property is more fully described as Lot 17, Block 41/5973 and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one. The applicant proposes to construct and maintain an ADU additional dwelling unit (not for rent). As proposed, the request will require a special exception to the single-family use regulations for an additional dwelling unit.

LOCATION: 743 Bizerte Avenue

APPLICANT: Kimberly Martin

REPRESENTATIVE: Alfredo Pena

REQUESTS:

The applicant proposes to construct and maintain an additional dwelling unit (not for rent) on a site developed with a single-family dwelling and an existing underground pool.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:

The board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when *in the opinion of the board*, the additional dwelling unit will not adversely affect neighboring properties.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the

board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

- Site: R-7.5(A) Single Family District
- North: R-7.5(A) Single Family District
- South: R-7.5(A) Single Family District
- East: R-7.5(A) Single Family District
- West: R-7.5(A) Single Family District

Land Use:

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

Zoning/BDA History:

There have been no related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The request for a special exception to the single-family use regulations focuses on constructing and maintaining an additional dwelling unit (not for rent) on a property zoned an R-7.5(A) Single Family District. In this district, one dwelling unit is allowed per lot.

DCAD records indicate the following improvements for the property located at 743 Bizerte Avenue: “main improvement: a structure with 1,973 square feet of living area built-in 1958” and “additional improvements: an attached garage with 506 square feet of area, and an underground swimming pool.”

The property is rectangular in shape, flat, and according to the application, contains 0.461 acres, or approximately 20,081 square feet in area. In an R-7.5(A) Single Family District the minimum lot size is 7,500 square feet.

The following information is shown on the submitted site plan:

- The proposed accessory structure is located in the rear 30 percent of the property and is approximately five feet from the side yard setback.
- The structure is proposed with a maximum floor area ratio of approximately 544 square feet with an attached open-air front patio consisting of approximately 234 square feet.

As of July 8, 2022, no letters have been submitted in support of the request and no letters have been submitted in opposition to the request.

If the board were to grant the special exception for an additional dwelling unit to a single-family use and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on this document. Furthermore, if the board were to

grant the special exception to allow the ADU, the Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

However, granting these requests will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all other code requirements), as depicted on the site plan, including the increase in floor area if each are approved by the board.

Timeline:

May 2, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 2, 2021: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

May 6, 2022: The Board of Adjustment Senior Planner 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 June 29th deadline to submit additional evidence for staff to factor into their analysis; and the July 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

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

July 8, 2022: The applicant submitted evidence (**Attachment A**) for staff consideration.

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: Fred Pena 410 E. 5th St. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Finney

I move that the Board of Adjustment, in request No. BDA 212-064, on application of Kimberly Martin represented by Alfredo Pena, **grant** the request to construct and maintain an accessory dwelling unit on a site developed with a single-family structure as a special exception to the single-family use regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring properties.

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.

The applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

SECONDED: Fleming

AYES: 5 – Lamb, Finney, Fleming, Glover, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA212-052(PD)

BUILDING OFFICIAL'S REPORT: Application of Rob Baldwin, Baldwin Associates representing Michael Brett Johnson and Kimberly Priest Johnson for special exceptions to the fence standards and the visibility obstruction regulations at 4630 Northaven Road. This property is more fully described as Lot 16, in City Block 1/6391, and zoned an R-1/2(A) Single Family District and Tract 2 within NSO Neighborhood Stabilization Overlay No. 1, Northaven Estates, which limits the height of a fence in the front yard to four feet and requires a 20-foot visibility triangle at an alley and driveway approach. The applicant proposes to construct an eight-foot-six-inch-tall fence located within a visibility obstruction triangle.

LOCATION: 4630 Northaven Road

APPLICANT: Michael Brett Johnson and Kimberly Priest Johnson

REPRESENTATIVE: Rob Baldwin, Baldwin Associates

REQUEST:

The applicant proposes to maintain an eight-foot-six-inch-tall aluminum fence with two metal vehicular gates one-foot from the front lot line along the Northaven Road frontage, within required visibility obstruction triangles.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

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:

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when *in the opinion of the board*, the item will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making. Additionally, while evidence is not required for this type of appeal, the representative provided evidence (**Attachment A**) via a letter for Board consideration.

The Transportation Development Services Senior Engineer has reviewed the request for a special exception to the visual obstruction regulations and does not have objections to the proposed request (**Attachment B**).

BACKGROUND INFORMATION:

Zoning:

- Site: R-1/2(A) Single Family District/NSO 1 Tract 2
- Northwest: R-16(A) Single Family District
- Northeast: R-16(A) Single Family District
- East: R-1/2(A) Single Family District/NSO 1 Tract 2
- Southwest: R-1/2(A) Single Family District/NSO 1 Tract 1
- Southeast: R-1/2(A) Single Family District/NSO 1 Tract 1
- West: R-1/2(A) Single Family District/NSO 1 Tract 2

Land Use:

The subject site and surrounding properties are developed with a single-family dwellings.

Zoning/BDA History:

There have been no board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The applicant proposes to maintain an eight-foot-six-inch-tall black aluminum fence with two electric double gates one-foot from the front lot line constructed of brick pilasters and metal gates. The subject site is situated along one frontage (Northaven Road) and developed with a two-story single-family dwelling. The fence is proposed to extend at a staggered depth of one-foot and eleven feet along the front yard setbacks, within a required visibility obstruction triangle at the private drive approach along Northaven Road.

The property is zoned an R-1/2(A) Single Family District and NSO 1 Tract 2 which requires a front yard setback of 75 feet and an interior side yard setback of 15 feet. The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.

Section 51A-4.602(d) of the Dallas Development Code states that 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 alleys); 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 following information is shown on the submitted site plan:

- The proposed fence is located in the front yard along Northaven Road, constructed along the front lot line.
- The length of the proposed fence in the front yard along Northaven Road is approximately 168.66 feet perpendicular to the frontage.
- The fence is proposed to be constructed of black aluminum fencing and black aluminum posts.
- The fence proposes two electric gates obstructing the two 20-foot visibility triangles along Northaven Road (14-foot-wide gates) proposed to be constructed of brick pilasters and black metal gates.
- The visual obstruction is proposed to encroach approximately 10-feet into the visibility triangles at the private drive approaches along Northaven Road.

Staff conducted a field visit of the site and surrounding area and noticed no other fences appear to be constructed above the maximum height of four feet within the front yard setback nor obstruct the required 20-foot visibility triangle at drive approaches.

The applicant has the burden of proof for both, the special exception to the fence regulations and a special exception to construct the fence in a required visibility obstruction triangle, since the basis for these types of appeals are in the opinion of the board:

- Whether the proposed fence height would adversely affect the neighboring properties,
- Visibility obstructions items are made on the basis of the item(s) not constituting a traffic hazard, and
- Technical opinions provided from the city engineer.

The Transportation Development Services Senior Engineer does not have objections to the request for a special exception to construct a fence in a required visibility obstruction triangle (**Attachment B**).

As of July 8, 2022, staff has received one letter in opposition of the request and no letters in support of the request.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation plan would limit the height of the fence and location within the 20-foot visibility triangle at the private drive approaches adjacent to Northaven Road, as shown on the respective plans.

Timeline:

- May 2, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- May 6, 2022: The Board Senior Planner emailed the representative the following information:
- a copy of the application materials including the Building Official's report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the June 29th deadline to submit additional evidence for staff to factor into their analysis; and the July 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the July public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Development Services Chief Planner, the Conservation Districts Senior Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

June 30, 2022: The representative provided evidence (**Attachment A**) for staff consideration.

June 30, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION: Blanche Moore 4720 Northaven Rd. Dallas TX
Shelton Hopkins 4707 Crooked Ln. Dallas, TX
McKenna Michel 4717 Crooked Ln. Dallas TX

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 212-052 **hold** this matter under advisement until **August 16, 2022**.

SECONDED: Neumann

AYES: 4 – Lamb, Finney, Glover, Neumann

NAYS: 1– Fleming

MOTION PASSED: 4 - 1

****The first motion per Lamb and seconded by Neumann to Grant failed 1-4 with Neumann, Finney, Glover and Fleming in opposition ****

FILE NUMBER: BDA212-053(JM)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin, Baldwin Associates to enlarge a nonconforming use at 3076 Samuell Boulevard. This property is more fully described as Lots 10-12, Block B/2104 and is zoned an RR Regional Retail District, which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming motel use, which will require a special exception to the nonconforming use regulations.

LOCATION: 3076 Samuell Boulevard

**APPLICANT/
REPRESENTATIVE:**

Rob Baldwin, Baldwin Associates

REQUEST:

The site contains a nonconforming motel use with 16 rooms. The applicant requests to expand the nonconforming use to convert existing office space into five additional motel rooms.

STANDARD FOR ENLARGING A NONCONFORMING USE:

Section 51A-4.704(b) (5) (B) of the Dallas Development Code states the board may allow the enlargement of a nonconforming use when, *in the opinion of the board*, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STAFF RECOMMENDATION:

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on *the opinion of the board*.

BACKGROUND INFORMATION:

Zoning:

Site: RR Regional Retail District
North: R-7.5(A) Single Family District
East: RR Regional Retail District
South: RR Regional Retail District
West: RR Regional Retail District

Land Use:

The subject site is developed with a motel use. Properties immediately adjacent to the west, east, and south are undeveloped. Several nonconforming single-family uses exist farther west/southwest and east/southeast. A park use (Samuell Grand Park) is located across Samuell Boulevard to the north.

Zoning/BDA History:

No relevant zoning/board related cases in the vicinity over the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The existing main two-story structure was erected in 1983. The zoning district at the time was pre-transition, Chapter 51, and allowed the motel use by right. On March 5, 1984, a CO certificate of occupancy, was issued for a motel use. In July of 1984, the zoning was transitioned to an RR Regional Retail District. On September 30, 1987, regulations for the motel use changed and where it was previously generally allowed by right in the RR District, additional

regulations were added that when a motel use contains less than 60 guest rooms, an SUP specific use permit, is required. At that time, the motel use with 16 guest rooms became nonconforming and subject to Sec.51A-4.704 rules for maintaining and enlarging a nonconforming use. Subsequently, an office addition was permitted in 2017. The applicant is now seeking to enlarge the motel use by converting the office space into five additional guest rooms. This expansion would still be less than 60 guest rooms, requiring an SUP; however, the applicant has the option to request to enlarge the nonconforming use instead, which is the application under review today.

Section 51A-2.102(89) of the Dallas Development Code defines a nonconforming use as a use that does not conform to the use regulations of this chapter but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.

Section 51A-4.704(b)(5)(A) of the Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.

The applicant applied for a building permit on March 5, 2022 to remodel and create an addition. This request was subsequently cancelled and a request to expand the nonconforming use was submitted to the board on May 2, 2022.

The applicant has the burden of proof to establish that the enlargement of the non-conforming use:

1. does not prolong the life of the nonconforming use;
2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
3. will not have an adverse effect on the surrounding area.

If the board were to grant this request with a condition imposed that the applicant may obtain a CO for up to 21 motel rooms, the enlargement of the nonconforming use would be limited to exactly that, with no limitations on the structure other than the existing development code requirements. Granting this request will not provide relief from any other requirements of the code.

Timeline:

- May 2, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- June 13, 2022: The Board Chief Planner emailed the representative the following information:
- a copy of the application materials including the Building Official's report on the application;

- an attachment that provided the public hearing date and panel that will consider the application; the June 29th deadline to submit additional evidence for staff to factor into their analysis; and the July 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Chief Arborist, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION:

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 212-053, on application of Rob Baldwin, GRANT the request of this applicant to enlarge a nonconforming use because our evaluation of the property and the testimony shows that enlarging the nonconforming use (1) will not prolong the life of the nonconforming use; (2) would have been permitted under the zoning regulations that existed with the nonconforming use was originally established by right; and (3) will not have an adverse effect on the surrounding area.

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

Compliance with submitted site plan is required.

SECONDED: Fleming

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 -0 (unanimously)

FILE NUMBER: BDA212-057(PD)

BUILDING OFFICIAL’S REPORT: Application of Achdut Israel represented by Ryan Northway for special exceptions to the fence standards and the visibility obstruction regulations at 5821 McShann Road. This property is more fully described as Lot 6, in City Block 6997, and zoned an R-16(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a 20-foot visibility triangle at an alley and driveway approach. The applicant proposes to construct and maintain a six-foot-tall fence located in the front yard within a visibility obstruction triangle.

LOCATION: 5821 McShann Road

APPLICANT: Achdut Israel

REPRESENTATIVE: Ryan Northway

REQUEST:

The applicant proposes to construct and maintain a six-foot-tall iron fence with two iron sliding vehicular gates and two keypad gate control and call stations 10 feet from the front lot line along the McShann Road frontage, within two required visibility obstruction triangles.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

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:

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when *in the opinion of the board*, the item will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board’s decision-making.

The Transportation Development Services Senior Engineer has reviewed the request for a special exception to the visual obstruction regulations and does not have objections to the proposed request (**Attachment A**).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-16(A) Single Family District
<u>North:</u>	TH-2(A) Townhouse District
<u>East:</u>	R-16(A) Single Family District
<u>South:</u>	R-16(A) Single Family District
<u>West:</u>	R-16(A) Single Family District

Land Use:

The subject site is developed with an institutional use while surrounding properties to the north, east, south, and west are developed with a single-family dwellings.

Zoning/BDA History:

There have been no board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The applicant proposes to maintain a six-foot-tall fence with two electric sliding gates constructed of iron and located 10 feet from the front lot line. The subject site is situated along one frontage (McShann Road) and developed with two structures consisting of a one-story structure dedicated to child-care during service and one two-story structure containing a church, synagogue, temple, mosque use. The fence is proposed to extend at a depth of one-foot and length of 11 feet along the front yard setback, within two required visibility obstruction triangles at two private drive approaches along McShann Road.

According to DCAD, the structures were constructed in 1967 and 2021, respectively. The first structure constructed in 1967 is a single-family dwelling unit consisting of approximately 2,283 square feet which was converted to a church, synagogue, temple, mosque use (when). The second structure is a two-story structure (Achdut synagogue) consisting of approximately 2,059 square feet and constructed in 2021).

The property is zoned an R-16(A) Single Family District which requires a front yard setback of 35 feet and a side yard setback of 15 feet for uses other than single-family. The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.

Section 51A-4.602(d) of the Dallas Development Code states that 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 alleys); 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 following information is shown on the submitted site plan:

- The proposed fence is located in the front yard along McShann Road, constructed along the front lot line.
- The length of the proposed fence in the front yard along McShann Road is approximately 137.10 feet perpendicular to the frontage.
- The fence is proposed to be constructed of wrought iron.
- The fence proposes two electric sliding gates obstructing two 20-foot visibility triangles along McShann Road (16-foot-wide gates) proposed to be constructed of iron with two keypad gate control and call stations.
- The visual obstruction is proposed to encroach approximately 10-feet into the visibility triangles on either side of the gate at the private drive approaches along McShann Road.

Staff conducted a field visit of the site and surrounding area and noticed no other fences appear to be constructed above the maximum height of four feet within the front yard setback nor obstruct the required 20-foot visibility triangle at drive approaches.

The applicant has the burden of proof for both, the special exception to the fence regulations and a special exception to construct the fence in a required visibility obstruction triangle, since the basis for these types of appeals are in the opinion of the board:

- Whether the proposed fence height would adversely affect the neighboring properties,
- Visibility obstructions items are made on the basis of the item(s) not constituting a traffic hazard, and
- Technical opinions provided from the city engineer.

The Transportation Development Services Senior Engineer does not have objections to the request for a special exception to construct a fence in a required visibility obstruction triangle (**Attachment A**).

As of July 8, 2022, staff has received no letters in support of the request and no letters in opposition of the request.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation plan would limit the height of the fence and location within the 20-foot visibility triangle at the private drive approaches adjacent to Northaven Road, as shown on the respective plans.

Timeline:

May 12, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

May 6, 2022: The Board Senior Planner emailed the representative the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the June 29th deadline to submit additional evidence for staff to factor into their analysis; and the July 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the July public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

July 30, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: Ryan Northway 5821 McShann Dallas, TX

APPEARING IN OPPOSITION: Tyrone Powell 5831 McShann Dallas TX
Willis Broden 5740 McShann Dallas, TX

MOTION: **Lamb**

I move that the Board of Adjustment in Appeal No. BDA 212-057 **hold** this matter under advisement until **August 16, 2022**.

SECONDED: **Finney**

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-058(PD)

BUILDING OFFICIAL'S REPORT: Application of Lynn Gilliland Dauterman represented by Tommy Mann and David Martin, Winstead PC for a special exception to the landscape regulations and a variance to provide a zero-foot front yard setback, which will require a 10-foot variance to the front yard setback regulations at 4525 McKinney Avenue. This property is more fully described as Lots 4-6, in Block K/1535, and is zoned an LC Light Commercial Subdistrict within Planned Development District No. 193, the Oak Lawn Special Purpose District which requires mandatory compliance with the landscape regulations and a minimum front yard setback of 10-feet. The applicant proposes to construct and maintain the existing retail structure that contain three suites and provide an alternate landscape plan and a zero-foot front yard setback, which will require a special exception to the landscape regulations and a variance to the front yard setback regulations.

LOCATION: 4525 McKinney Avenue

APPLICANT: Lynn Gilliland Dauterman

REPRESENTATIVE: Tommy Mann and David Martin, Winstead PC

REQUESTS:

A request for a special exception to the landscape regulations is made to construct and maintain a one-story retail structure consisting of three suites and approximately 9,994 square feet of floor area. The alternate landscape plan will not meet the requirements of the landscape regulations or the alternate landscape plan (BDA123-049) approved by the Panel B Board in 2013 or, more specifically, will not provide 60 percent of the landscape site area (LSA), 12 percent of the general planting area (GPA) of the LSA, nor six percent of the special planting area of the GPA.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

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

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

STAFF RECOMMENDATION:

Approval, subject to compliance with the alternate landscape plan.

The City of Dallas chief arborist submitted a memo regarding the applicant's request recommending approval (**Attachment B**).

Rationale:

- The applicant has substantiated how the proposed layout and use of the area will not compromise the spirit and intent of the landscape requirements of PD No. 193.

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:

- (D) 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;
- (E) 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
- (F) 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.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (f) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (g) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
 - (h) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (i) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (j) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Denial.

Rationale:

While evidence (**Attachment A**) was received, the evidence does not provide staff a comparative analysis of properties within the same zoning district. Therefore, staff cannot establish whether the subject site is restrictive in area, shape, or slope, and thus cannot be developed in a manner commensurate with other properties within the same zoning district.

BACKGROUND INFORMATION:

Zoning:

- Site: Subdistrict LC within Planned Development District No. 193
- North: Subdistrict LC within Planned Development District No. 193
- South: Subdistrict LC within Planned Development District No. 193
- East: Subdistrict LC within Planned Development District No. 193
- West: Subdistrict LC within Planned Development District No. 193

Land Use:

The subject site is developed with an approximately 9,994-square-foot retail use (Yeti, Jonathan Adler/Interior Define). The areas to the north, south, east, and west are developed with a mix of retail uses.

Zoning/BDA History:

There have been no related board and zoning cases in the vicinity of the subject site within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The request for a special exception to the landscape regulations is to maintain an existing multi-tenant retail structures that will not meet the minimum landscape requirements along the McKinney Avenue frontage nor provide the minimum required front yard setback of 10 feet along McKinney Avenue frontage.

The property is located in an LC Light Commercial Subdistrict within Planned Development District No. 193, the Oak Lawn Special Purpose District, with landscape regulations percentages designated for the 10-foot front yard setback. These percentages mandate that the 10-foot front yard setback require and maintain 60 percent of the landscape site area (LSA), 12 percent of the general planting area (GPA) of the LSA, and six percent of the special planting area of the GPA.

An alternate landscape plan submitted shows the site will not meet the requirements of the landscape regulations or the alternate landscape plan (BDA123-049) approved by the Panel B Board in 2013 that triggered noncompliance with the landscape regulations with the addition of ADA ramps and walkways to the front of the structure; thereby, increasing the nonpermeable coverage of the property. Additionally, the parking bay to the south of the structure could not provide full screening with the addition of the handicapped access ramp that replaces landscape area, did not comply with landscape site area percentage, or the minimum sidewalk width between five and 12 feet, and provides a four-foot-wide sidewalk.

As a result, the chief arborist recommended the following: "The City's chief arborist states that the owner demonstrated an effort to meet the spirit and intent of the ordinance with the introduction of new trees in the wide planting area that will still be within the tree planting zone while also protecting the existing large tree and maintaining a neat site appearance in the front and rear of the lot."

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

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

The applicant is seeking a special exception to the landscaping requirements of PD 193 (LC). The proposed landscape plan amends the plan approved by the board in 2013 with case BDA 123-049.

The chief arborist’s memo states the following with regard to “provision”:

- The proposed landscape plan provides amended landscaping conditions to the provisions that were applied in 2013. The initial case was triggered with the construction of the access ramp. New plant materials will be added to existing plants.

The chief arborist’s memo states the following with regard to “deficiencies”:

- The structure and paving is within the LC district required front yard (10’ setback) where 60% of the area is required to be landscape site area, 12% general planting area (of LSA), and 6% special planting area (of GPA). The plan proposes new store front access to the space. Ten percent of the lot is required to be LSA.
- Lots in LC district require sidewalks between 5-12’ from back of curb with 6’ width sidewalks.

The chief arborist’s revised memo states the following with regard to the “recommendation”:

The chief arborist recommends approval of the proposed alternative landscape plan because it appears the proposed layout and use of the area will not compromise the spirit and intent of the landscaping regulations.

As of July 8, 2022, no letters have been submitted in support of the request and no letters have been submitted in opposition to the request.

If the board were to grant these requests and impose the submitted site plan and alternate landscape plan as a condition to the request, the site would be provided a variance to the front yard setback and an exception from compliance with minimum landscape requirements.

Timeline:

May 6, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” that have been included as part of this case report.

May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

May 6, 2022: The Board Senior Planner emailed the representative the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the June 29th deadline to submit additional evidence for staff to factor into their analysis; and the July 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

June 29, 2022: The representative provided evidence (**Attachment A**) for staff review.

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

June 30, 2022: The Development Services Chief Arborist provided staff with the Arborist report (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: David Martin 4525 McKinney Dallas, TX

APPEARING IN OPPOSITION:

MOTION: **Glover**

I move that the Board of Adjustment in Appeal No. BDA 212-058 **hold** this matter under advisement until **August 16, 2022**.

SECONDED: **Neumann**

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-059(PD)

BUILDING OFFICIAL'S REPORT: Application of Patrick Craine, Practice An Architectural Office for a variance to the front yard setback regulations at 938 N. Winnetka Avenue. This property is more fully described as part of lot 10 in City Block 1/3453 and is zoned a Subarea 1 within CD No. 1, the King’s Highway Conservation District, which requires a front yard setback of 25 feet. The applicant proposes to relocate the front entry door, existing nonconforming steps, and reconstruct the roof on an existing single-family residential structure and provide a 19-foot-six-inch front yard setback, which will require a five-foot-six-inch variance to the front yard setback regulations.

LOCATION: 938 N. Winnetka Avenue

APPLICANT: Patrick Craine, Practice An Architectural Office

REQUESTS:

The property is situated along two frontages (N. Winnetka Avenue and Stewart Drive) along a corner lot but only contains one front yard since continuity of the blackface is not triggered along Stewart Drive. The front yard and subject of the variance request is the frontage along N. Winnetka Avenue.

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:

- (G) 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;
- (H) 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
- (I) 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.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (k) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (l) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
 - (m) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (n) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (o) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Denial.

Rationale:

While evidence (**Attachment A**) was received, the evidence does not provide staff with substantive details that reflective a restrictive area, shape, or slope where the property can't be development commensurately. The evidence states that the subject site is 6,192 square feet in area, with a living area of 2,920 square feet, a lot width of 40 feet, and a lot length of 150 feet. While the property is a corner lot, and has double frontage, the lot is not restricted by the blackface continuity since the property to the rear of the subject site does not front along Steward Drive.

The evidence provided compares four properties with lot areas of 7,640 square feet, 7,849 square feet, 9,327 square feet, and 10,936 square feet, respectively. Additionally, the four comparative properties provide a range of lot width from 50 to 54 feet. While the four comparative properties are similarly zoned, the properties are neither comparable in lot area, shape, or slope, and are approximately one and two blocks south of the subject. However, consideration of three lots immediately north of the subject site with similar zoning, front along Stewart Drive, contain the same lot dimensions of 40'x150', and does not provide a similar front yard setback hardship were not included in the evidence.

Ultimately, the evidence does not provide staff with substantial evidence to conclusively establish whether the subject site is restrictive in area, shape, or slope, and thus cannot be developed in a manner commensurate with other properties within the same zoning district.

BACKGROUND INFORMATION:

Zoning:

Site: Subarea 1 within Conservation District No. 1
North: Subarea 2 within Conservation District No. 13
East: Subarea 2 within Conservation District No. 13
South: Subarea 1 within Conservation District No. 1
West: Subarea 1 within Conservation District No. 1

Land Use:

The subject site and all surrounding properties to the north, east, south and west are developed with single-family dwellings.

Zoning/BDA History:

There have been no related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on renovating an existing single-family dwelling unit that is situated along a corner and two frontages (N. Winnetka Avenue and Steward Drive). In a single-family district, a corner lot with frontage on two streets where one frontage is shorter than the other allow the longer frontage to be governed by the side yard regulations. Since the subject site is zoned Subarea 1 within Conservation District No.1, a 25-foot front yard setback must be maintained along N. Winnetka Avenue.

The current façade of the existing house is located 24-feet-four-inches measured from the front wall face. However, since the Development Code regulates that a structure is any permanent feature above six-inches-in-height. Therefore, the setback is measured from the rise of the second step leading into the house. The applicant proposes to reroof the existing structure, remove the dormer window, change the roofline to provide a gable roof, a new window, provide new shaker siding, remove the existing four double hung windows, two along each side of the front door, install five double hung windows with two proposed along the northwestern side of the front façade and three proposed along the northeastern façade. Additionally, the applicant proposes to remove the existing two front concrete steps which currently encroach into the 25-foot front yard setback and replace and recenter the steps proposed to be constructed similarly of concrete.

A site plan has been submitted denoting the existing two-story, single-family dwelling located 19-feet-six-inches from the front property line along N. Winnetka Avenue and containing approximately 2,920 square feet of floor area.

The subject site is not irregular in shape but is irregular in area and provides a total floor area greater than comparable dwellings due to the addition of a second story. Subarea 1 within CD No. 1 zoning district requires lots to have a minimum lot size of 7,500 square feet. However, the

applicant has not provided evidence that reflects the decrease in buildable lot area due to the loss of frontage width.

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 Subarea 1 within CD No. 1 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 Subarea 1 within CD No. 1 zoning classification.

Additionally, the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
- Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
- Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- The municipality consider the structure to be a nonconforming structure.

As of July 8, 2022, no letters have been submitted in support of or in opposition of the request.

If the board were to grant this front yard setback variance request and impose the submitted site plan as a condition, development would be limited to what is shown on this document. Granting this variance request will not provide any further relief from the Dallas Development Code regulations.

Timeline:

May 2, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” that have been included as part of this case report.

May 6, 2022: With only one panel meeting in July, the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

May 6, 2022: The Board Senior Planner emailed the representative the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the June 29th deadline to submit additional evidence for staff to factor into their analysis; and the July 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

June 30, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, and the Assistant City Attorney to the Board.

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

July 8, 2022: The representative provided evidence (**Attachment A**) for staff review.

BOARD OF ADJUSTMENT ACTION: July 19, 2022

APPEARING IN FAVOR: Jessica Nelson 829 W. Jefferson Blvd. Dallas, TX
Kristin Perkins 4420 Tamworth Rd. Ft. Worth TX

APPEARING IN OPPOSITION: None

MOTION: **Lamb**

I move that the Board of Adjustment in Appeal No. BDA 212-059 **hold** this matter under advisement until **August 16, 2022**.

SECONDED: **Neumann**

AYES: 5 – Lamb, Finney, Glover, Neumann, Fleming

NAYS: 0–

MOTION PASSED: 5 -0 (unanimously)

MOTION: Neumann

I move to adjourn the Panel A hearing

SECONDED: Lamb

AYES: 5 - Lamb, Finney, Fleming, Glover, Neumann

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

Recess/Lunch- 12:33 p.m.

Resume- 1:15 p.m.

Recess- 1:33 p.m.

Resume- 1:39 p.m.

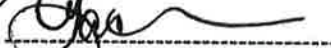
4:19 P.M. Board Meeting adjourned for July 19, 2022



CHAIRPERSON signed 8-16-22



BOARD ADMINISTRATOR



BOARD SECRETARY

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