



BOARD OF ADJUSTMENT

Panel C Minutes

December 12, 2022

DRAFT

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**CITY SECRETARY
DALLAS, TEXAS**

6ES Briefing Room

24957316190@dallascityhall.webex.com

Robert Agnich, Vice-Chair

PRESENT: [5]

Robert Agnich, VC

Rodney Milliken

Jared Slade

Roger Sashington

Judy Pollock

ABSENT: [0]

Vice-Chair Agnich called the briefing to order at **11:12 A.M.** with a quorum of the Board of Adjustment present.

Vice-Chair Agnich called the hearing to order at **1:25 P.M.** with a quorum of the Board of Adjustment present.

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.

PUBLIC SPEAKERS

The Board of Adjustment provided "public speaker" opportunities for individuals to comment on matters that were scheduled on the agenda or to present concerns or address issues that were not matters for consideration listed on the posted meeting agenda.

We had no speakers for public testimony during this hearing.

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MISCELLANEOUS ITEMS

Approval of the Board of Adjustment Panel C November 14, 2022 public hearing minutes.

Motion was made to approve Panel C November 14, 2022 public hearing minutes.

Maker:	Judy Pollock				
Second:	Robert Agnich				
Results:	5-0 unanimously				
		Ayes:	-	5	Robert Agnich, Judy Pollock, Roger Sashington, Rodney Milliken, and Jared Slade
		Against:	-	0	

Approval of the Full Board Special Called Meeting November 1, 2022 minutes.

Motion was made to approve November Special Called meeting minutes.

Maker:	Robert Agnich				
Second:	Jared Slade				
Results:	5-0 unanimously				
		Ayes:	-	5	Robert Agnich, Judy Pollock, Roger Sashington, Rodney Milliken, and Jared Slade
		Against:	-	0	

Approval of the 2021-2022 BOA Annual Report.

Motion was made to approve the 2021-2022 BOA Annual Report.

Maker:	Judy Pollock				
Second:	Robert Agnich				
Results:	5-0 unanimously				
		Ayes:	-	5	Robert Agnich, Judy Pollock, Roger Sashington, Rodney Milliken, and Jared Slade
		Against:	-	0	

UNCONTESTED ITEMS

**1. 3516 Northaven Rd.
BDA212-114(OA)**

FILE NUMBER: BDA212-114(OA)

BUILDING OFFICIAL'S REPORT: Application of Marcelo Migoni for a special exception to the single-family use regulations at 3516 Northaven Road. This property is more fully described as Lot 25 Block 4/6439 and is zoned an R-10(A) Single Family District, which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit, not for rent, which will require a special exception to the single-family zoning use regulations.

LOCATION: 3516 Northaven Road

APPLICANT: Marcelo Migoni

REQUEST:

A request for a special exception to the single-family use regulations is made to construct and maintain a one-story additional dwelling unit structure on a site being developed with a single-family use.

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

Section 51-4.201(b)(1)(E)(i) of the Dallas Development Code specifies that 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: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

BACKGROUND INFORMATION

Zoning:

Site: R-10 (A) Single Family District
North: R-10 (A) Single Family District
South: R-10 (A) Single Family District

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East: R-10 (A) Single Family District

West: R-10 (A) Single Family District

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

This request for a special exception to the single-family use regulations focuses on constructing and maintaining a one-story additional dwelling on a site developed with a single-family use.

The site is zoned an R-10(A) Single Family District where the Dallas Development Code permits one dwelling unit per lot.

The single-family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot and that the Board of Adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: (1) be use as rental accommodations; or (2) adversely affect neighboring properties.

The Dallas Development Code defines:

- a “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- a “kitchen” as “any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities.”
- a “bathroom” as “any room used for personal hygiene and containing a shower or bathtub or containing a toilet and sink.”
- a “bedroom” as “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sunrooms, and other similar rooms are considered bedrooms.”

The submitted site plan identifies the location of two building footprints, the larger of the two denoted as “3516 Northaven Road,” which is the proposed single family residential main structure. The smaller of the two structures is marked as “ADU”.

This request centers on the function of what is proposed to be inside the smaller structure on the site – the “ADU” structure, specifically its collection of rooms/features shown on the floor plan: one bedroom, living room, a kitchen, and a bathroom.

Note that DCAD website is down due to a ransomware attack. Therefore, staff is unable to verify the information provided with the site plan. However, a site visit by staff revealed that the information provided is correct. According to the submitted site plan the main structure contains 2,212 square

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feet of total living area and the proposed additional dwelling unit will contain 360 square feet of living area.

The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.

As of December 2, 2022, no letters have been submitted in support or in opposition to the request.

Granting this special exception request 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 required code requirements).

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.

Timeline:

- October 3, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment."
- November 9, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- November 9, 2022: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd deadline to submit additional evidence to be incorporated into the board's docket materials.
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- November 29, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, the Development Services Chief Planner, the Assistant City Attorney to the Board, and the Senior Planner.

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Speakers:

For: Marcelo Migoni 3516 Northaven Rd. Dallas, TX

Against: None

Motion

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and evidence submitted that the applications satisfy the Dallas Development Code, as amended, and are consistent with the general purpose and intent of the Code, as applicable to wit:

BDA 212-114—Application of Marcelo Migoni for a special exception to the single-family use regulations in the Dallas Development Code, as amended, is granted subject to the following condition:

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

Maker:	Roger Sashington				
Second:	Robert Agnich				
Results:	5-0				
		Ayes:	-	5	Judy Pollock, Roger Sashington, Rodney Milliken, and Jared Slade, Robert Agnich
		Against:	-	0	

INDIVIDUAL ITEMS

2. 10203 Hollow Way Rd.
BDA212-113(OA)

FILE NUMBER: BDA212-113(OA)

BUILDING OFFICIAL'S REPORT: Application of Karl Crawley for a special exception to the fence height regulations at 10203 Hollow Way Road. This property is more fully described as Lot 1, Block 5517, and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct a 7' 6" high fence with 11' 2" and ¾" columns and a 12' high gate in a required front yard, which requires an eight-foot special exception to the fence regulations.

LOCATION: 10203 Hollow Way Road

APPLICANT: Karl Crawley, Masterplan Texas

REQUEST:

A request for an 8' special exception to the fence height regulations is made to construct and maintain a 7' 6" high limestone fence with up to 11'2" and ¾" limestone columns with a 7' high iron pedestrian gate, and a 12' high iron gate in the required front yard on a site developed with a single-family home.

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.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single Family District)
Northwest: R-1ac(A) (Single Family District)
Northeast: R-1ac (A) (Single Family District)
East: R-1ac (A) (Single Family District)
South: R-1ac (A) (Single Family District)
West: R-1ac (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 four related board cases in the vicinity within the last five years.

1. **BDA212-082:** On September 19, 2022, Panel C denied without prejudice an eight-foot special exception to the fence height regulations at 10203 Hollow Way Road, the subject site.
2. **BDA212-022:** On April 20, 2022, Panel B granted a special exception to the height requirement for fences a special exception to the surface area openness requirement subject to compliance with the submitted site plan and elevation is required at 10007 Hollow Way Rd.
3. **BDA212-033:** On April 20, 2022, Panel B granted a special exception to the height requirement for fences a special exception to the surface area openness requirement subject to compliance with the submitted site plan and elevation is required at 10007 Hollow Way Rd.
4. **BDA212-089:** On October 20, 2021, Panel B, Board of Adjustment granted a request for a special exception to the fence regulations, a special exception to the fence standards

regulations, and two special exceptions to the visual obstruction regulations at 9646 Douglas Avenue.

GENERAL FACTS/STAFF ANALYSIS:

The purpose of this request focuses on constructing and maintaining a 7' 6" high limestone fence with up to 11' 2' and ¾" high limestone columns with a 7' high iron pedestrian gate, and a 12' high iron gate in the required front yard on a site developed with a single-family.

The subject site is zoned an R-1ac(A) Single Family District and requires a minimum front yard setback of 40 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.

According to DCAD, the property contains 2.00 acres and is developed with a two-story, 10,382-square-foot single-family structure constructed in 2007. Additional improvements include a 1,248-square-foot attached garage, tennis court, and pool. The proposed fence has not yet been constructed.

According to the submitted site plan and elevation plan submitted, the applicant proposes:

- A 19' wide decorative iron gate with a maximum height of 12' and an automatic opener.
- The gate is to be located 26' from the property line that curves 104' along Hollow Way Road.
- The proposed up to 7' 6" tall walls surrounding the gates are limestone with up to 11' 2" and ¾" high limestone columns and cast stone caps and gas lanterns on either side of the gates.
- These sections of the solid walls are set back from 19' 7" on the south, to 24' 4" to the north from the property line along Hollow Way Road.
- The northern wall section contains an iron pedestrian gate that is 3' wide and 7' tall.

Staff conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and noticed other fences that are above four feet-in-height and located in a front yard setback. Please refer to the above history for fence locations.

As of December 2, 2022, no letters have been submitted in support or in opposition to the request.

The applicant has the burden of proof in establishing that the special exception to the fence standards related to the height of up to eight feet located on Hollow Way Road will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to the height would require the proposal exceeding 4' in height in the front yard setback located along Hollow Way Road to be maintained in the locations and heights as shown on the site plan and elevation plan. However, granting this request will not provide any relief to the Dallas Development Code regulations other than allowing the additional height for the fence structure.

Timeline:

- September 26, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment."
- November 9, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

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November 9, 2022: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd deadline to submit additional evidence to be incorporated into the board's docket materials.
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 29, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, the Development Services Chief Planner, the Assistant City Attorney to the Board, and the Senior Planner

Speakers:

For: Karl Crawley 2201 Main St. #1280 Dallas, TX

Against: None.

Motion

I move that the Board of Adjustment, in Appeal No. BDA 212-113, on application of Karl Crawley, **grant** the request of this applicant to construct and/or maintain a 12-foot-high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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 and elevation is required.

Maker:	Rodney Milliken				
Second:	Jared Slade				
Results:	4-1				
		Ayes:	-	4	Roger Sashington, Judy Pollock, Rodney Milliken, and Jared Slade
		Against:	-	1	Robert Agnich

3. **238 Hillvale Dr.**
BDA212-115(OA)

FILE NUMBER: BDA212-115(OA)

BUILDING OFFICIAL'S REPORT: Application of Wendy Golson for a special exception to the urban forest conservation regulations at 238 Hillvale Drive. This property is more fully described as Lot 17, Block 6625 and is zoned an R-7.5(A) Single Family District, which requires mandatory tree preservation and mitigation. The applicant proposes to construct a residential subdivision and requests an extended deadline for compliance and reduction in the required mitigation, which will require a special exception to the urban forest conservation regulations.

LOCATION: 238 Hillvale Drive

APPLICANT: Wendy Golson

REQUEST:

A request for a special exception to the urban forest conservation requirements focuses on asking for an unspecified time extension to complete all required tree replacement on a property that is being developed as a residential subdivision.

STANDARD FOR A SPECIAL EXCEPTION TO THE URBAN FOREST CONSERVATION REQUIREMENTS:

(1) The board may grant a special exception to the requirements of Division 51A-10.130, other than fee and notice requirements, upon making a special finding from the evidence presented that:

(A) strict compliance with the requirements of Division 51A-10.130 will unreasonably burden the use of the property;

(B) the special exception will not adversely affect neighboring property; and

(C) the requirements are not imposed by a site-specific landscape plan or tree mitigation plan approved by the city plan commission or city council.

(2) In determining whether to grant a special exception under Paragraph (1), the board shall consider the following factors:

(A) The extent to which there is residential adjacency.

(B) The topography of the site.

(C) The extent to which landscaping exists for which no credit is given under this article.

(D) The ability to plant replacement trees safely on the property.

(E) The extent to which alternative methods of replacement will compensate for a reduction of tree mitigation or extended time for tree replacement.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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- The applicant must fully comply with the Article X tree replacement requirements with one exception: the time in which to fully mitigate trees removed on the property is extended until April 30, 2024.

Rationale:

- The Chief Arborist supports the request his condition imposed.

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: RR Regional Retail District

Land Use:

The property is undeveloped. Properties to the north, east, and south are developed with single-family uses. Properties to the west are zoned for commercial use, and largely developed with auto and truck-related uses.

Zoning/BDA History:

There has been one related board or zoning cases in the immediate vicinity within the last five years.

1. BDA212-091: On September 19, 2022, the Board of Adjustment Panel C denied a request for a special exception to the tree conservation requirements contained in Article X of the Dallas Development Code, without prejudice at the subject site.

GENERAL FACTS/STAFF ANALYSIS:

This request for a special exception to the urban forest conservation requirements focuses on asking for an unspecified time extension to complete all required tree replacement on a property that is being developed as a residential subdivision.

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

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

The applicant is seeking a special exception to the tree conservation requirements of Article X. The request is to consider a special exception for the timing provisions of the Tree Conservation Division of Article X.

The chief arborist's memo states the following regarding "provision":

A large number of mature protected trees were removed from the property in April 2022 without a tree removal application which is required under Article X. Fill material was stored and graded across the property raising the grade of the lot affecting some of the trees. The owner intends for future construction of a shared access development of single-family units and the property has been platted for this purpose. The property design can comply with minimum Article X landscaping

requirements for shared access developments.

Based on staff verification of a tree survey, 412.6 classified inches from 30 protected trees were removed, or will be removed, for the proposed development. The 2.72-acre site area for the development requires a minimum of 30 site trees in landscaping. The nine-lot design requires a minimum of 10% landscape area which would be provided on the plan

The chief arborist's memo states the following regarding "deficiencies":

The city ordinance under Sec. 51A-10.134(c)(5) stipulates that all replacement must occur within 30 days. If the property owner provides the building official with an affidavit stating that all replacement trees will be planted within six months, the building official may allow the planting to occur at the later date. In addition, for residential subdivisions, on-site tree replacement may also occur with the completion of a tree replacement plan for the development. Additional time may be allotted for the site tree replacement to be planted to be completed at the end of the development. However, all required tree replacement that is not scheduled to be planted within the approved plan design for the development site must be completed within the six months after tree removal.

The applicant has made a request for an alternate replacement deadline date for all removal from what is required by ordinance, or for a period of no later than 18 months of the board decision.

Timing

Ordinance

Request

30 days/6 months (with affidavit to extend)

April 30, 2024 requested deadline

Trees removed to be mitigated:

Ordinance

Request

Tree classification

Diameter inches

412.6" mitigated at completion (no change).

Four significant trees (1.5x)

162"

Class 2 (0.7x)

233.8"

Class 3 (0.4x)

16.8"

412.6

Significant trees are native red oaks at 24" diameter or greater with a mitigation 1.5 times the base measurement (ex.: 24" tree is 36"). Class 2, or standard 'favored' trees, have mitigation reduced to 70% of baseline. Class 3 trees are listed for lower mitigation rates at 40% of baseline.

The applicant has made further mention of pursuing specific methods of mitigation including payment to the Reforestation Fund and donation of trees to a city department. These methods are available at any point within the mitigation deadline period under Section 51A-10.135, and any combination of the methods may be applied after required planting on site is determined.

The chief arborist's memo states the following regarding the "recommendation":

The chief arborist has no objections to the time extension request with an established completion date for tree replacement of April 30, 2024, and without further stipulations beyond the Article X methods of tree replacement by ordinance.

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If the board were to grant this request, and impose the staff suggested condition, the applicant would only be provided relief from fully compliance with the regulations related to the time in which all removed on the property must be fully mitigated by the applicant.

Timeline:

- October 05, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment."
- November 9, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- November 9, 2022: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd deadline to submit additional evidence to be incorporated into the board's docket materials.
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- November 29, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, the Development Services Chief Planner, the Assistant City Attorney to the Board, and the Senior Planner.
- November 30, 2022: The Development Services Chief Arborist provided staff with a memo (Attachment A).

Speakers:

For: Wendy Golson 238 Hillvale Dr. Dallas, TX

Against: Gregory Clopton 7051 Cornelia Ln Dallas, TX
Billy Roy 327 Penguin Dr. Dallas, TX
Kelly Hester 321 Penguin Dr. Dallas, TX

Motion

I move that the Board of Adjustment, in Appeal No. BDA 212-115, on application of Wendy Golson, **grant** the request of this applicant for a special exception to the urban forest conservation requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property and testimony shows that (1) strict compliance with the urban forest

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conservation requirements of this article will unreasonably burden the use of the property; (2) the special exception will not adversely affect neighboring property, and (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

The applicant must fully comply with Article X tree replacement requirements with one exception: the time in which to fully mitigate trees removed on the property is extended until October 31, 2023.

Maker:	Robert Agnich				
Second:	Roger Sashington				
Results:	4-1				
		Ayes:	-	4	Robert Agnich, Roger Sashington, Rodney Milliken, and Jared Slade
		Against:	-	1	Judy Pollock

4. **937 S Belt Line Rd.**
BDA212-116(OA)

FILE NUMBER: BDA212-116(OA)

BUILDING OFFICIAL'S REPORT: Application of AutoZone Parts Inc., represented by Alicia Cornill, for a special exception to the landscape regulations at 943 S. Beltline Road. This property is more fully described as Lot 2B Block D/8823, and is zoned CR Community Retail District, which requires mandatory landscaping. The applicant proposes to construct and/or maintain a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 943 S. Belt Line Road

APPLICANT: AutoZone Parts Inc., represented by Alicia Coronilla

REQUEST:

A request for a special exception to the landscape regulations is made to construct and/or maintain a 7,882' general merchandise structure and provide an alternate landscape plan or, more specifically, to not provide the required residential buffer zone and required plantings due to existing public utility conditions and restrictions on the subject site.

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

The board may grant a special exception to the landscape and tree preservation regulations of this

article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

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

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted alternate landscape plan is required.
2. The applicant must install and maintain a 6 'tall wood screening fence along the service (northeast) side of the use.

Rationale:

- The Chief Arborist supports the request with his suggested conditions imposed as part of the approval.

BACKGROUND INFORMATION:

Zoning

Site: CR Community Retail District
North: PD No. 831(Planned Development District) & R-10(A) Single Family District
East: R-10(A) Single Family District
South: PD No. 1042(Planned Development District) & CR Community Retail District
West: CR (Community Retail District) & CS Commercial Service District

Land Use:

The subject site is undeveloped. The area to the north is developed with commercial and single family uses; the areas to the east are developed with multifamily and single family uses; the area to the south, and west are developed with commercial and retail uses.

Zoning/BDA History:

There have not been any recent related board or zoning cases recorded in the vicinity of the subject site within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

This request for a special exception to the landscape regulations focuses on maintaining a 7,882' general merchandise structure and provide an alternate landscape plan or, more specifically, to not provide the required residential buffer zone and required plantings on the subject site.

The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.

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

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

The applicant is seeking a special exception to the landscaping regulations of Article X. The request is to consider an alternate landscape plan with adjustments for a residential buffer zone and required plantings due to existing public utility conditions and restrictions.

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

- The applicant has provided an alternate landscape plan which demonstrates compliance with Article X minimum requirements with exception of the tree planting requirements for residential adjacency to the northeast of the property. The residential buffer zone (RBZ) requires a minimum of 10 feet average width, and the plan has exceeded this to be about 17 feet to 20 feet in width excepting for a detention area. The landscape area will be covered in Bermuda grass and irrigated.
- An existing 8" gas line extends through the required buffer zone area. The gas company has restricted planting in proximity to the local distribution gas line. The Article X ordinance (Sec. 51A-10.104(h)) restricts planting within 5' either side of an underground local utility line and 10 feet (medium trees) to 15 feet (large trees) from building structures.
- A 6-foot tall wood fence (not shown on the landscape plan) was approved for construction on the Architectural Site Plan to be placed 14.1 feet from the property boundary between the building structure and front parking area and the residential property. This would create a wide maintained landscape area with a screening fence near the use.

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

- The 263-foot length of the RBZ requires a minimum of 7 trees for installation when screening is required, or a combination of 7 plant groups of trees and shrubs when screening is not required. No new trees or shrubs are proposed within 20 feet of the property boundary due to proximity to the distribution gas line and the lack of suitable space adjacent to the structure. Existing trees identified on the plan are either on the adjacent property or is a boundary (shared) tree with the neighboring residential property and are not applicable as site.

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

- The chief arborist has no objections to the alternate landscape plan conditional to the installation and maintenance of a 6-foot tall wood screening fence along the service side of the use.

The applicant has the burden of proof in establishing the following:

- Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and
- The special exception will not adversely affect neighboring property.

If the board were to grant this request and impose as conditions that the submitted revised alternate landscape plan, and that a 6 ' tall wood screening fence be installed and maintained along the service (northeast) side of the use, then site would be provided exception from the plantings and the residential adjacency buffer requirements on the subject site.

Timeline:

October 10, 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.

November 9, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

November 9, 2022: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd deadline to submit additional evidence to be incorporated into the board's docket materials.
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 29, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, the Development Services Chief Planner, the Assistant City Attorney to the Board, and the Senior Planner.

November 30, 2022: The Development Services Chief Arborist provided staff with a memo (Attachment A).

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Speakers:

For: Alicia Coronilla 2901 Dallas Pkwy #400 Plano, TX
Yen Lai 31533 Acacia Vista San Antonio, TX.
Carl Helton 5354 Spruce View Way Lakeland, TX

Against: None.

Motion

I move that the Board of Adjustment, in Appeal No. BDA 212-116, on application of Autozone Parts Inc., represented by Alicia Coronilla, **grant** the request of this applicant for a special exception to the landscaping requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property and testimony shows that (1) strict compliance with the landscaping requirements of this article will unreasonably burden the use of the property; (2) the special exception will not adversely affect neighboring property, and (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

Compliance with the submitted alternate landscape plan is required dated 12/12/22; and

The applicant must install and maintain a six-foot-tall wood screening fence along the service (northeast) side of the use.

Maker:	Judy Pollock				
Second:	Robert Agnich				
Results:	5-0				
		Ayes:	-	5	Judy Pollock, Roger Sashington, Rodney Milliken, and Jared Slade, Robert Agnich
		Against:	-	0	

HOLDOVER ITEMS

5. 3923 Frontier Ln.
BDA212-105(OA)

FILE NUMBER: BDA212-105(OA)

BUILDING OFFICIAL'S REPORT: Application of **Baldwin Associates** for a variance to the front yard setback regulations, for a special exception to the fence height regulations, for a fence standards regulation, for a special exception to the visibility visual obstruction regulation (20' by 20' visibility triangle) and for a at 3923 Frontier Lane. This property is more fully described as Lot 18, Block 3/2972, and is zoned R-7.5(A), Single Family District which limits the height of a fence in the front yard to four feet, requires a 20' visibility triangle at driveway approaches, a fence panel with a

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surface area that is less than 50 percent open and may not be located less than 5' from the front lot line, and requires a front yard setback of 30'. The applicant proposes to construct a single family residential structure and provide a 5' front yard setback, which will require a 25' variance to the front yard setback regulations and to construct an 8' 9" high fence in the required front yard which will require a 4' 9" special exception to the fence regulations and to construct a fence in a required front yard with a fence panel having less than 50 percent open surface area and located less than 5' from the front lot line which will require a special exception to the fence regulation, and to construct a single family residential fence structure in a required visibility obstruction at the driveway approaches.

LOCATION: 3923 Frontier Lane

APPLICANT: Baldwin Associates

REQUESTS:

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

1. A request for a variance to the front yard setback regulations of 25' is made to maintain an approximately 768 square-foot pool located 5' from one of the site's two recorded front property lines (Ellsworth Street) or 25' into this 30' recorded front yard setback on a site that is developed with a single-family structure.
2. A request for a special exception to the fence standards regulations related to the maximum fence height of 4' is made to construct and maintain an 8' 9" high solid wood fence and a 6' high solid wood gate in one of the site's two front property lines (Ellsworth Street).
3. A request for a special exception to the fence standards regulations related to fence panels with a surface area that is less than 50 percent open and less than 5' from the front lot line is made to construct and maintain the 8' 9" high solid wood fence and a 6' high solid wood gate located in one of the site's two front property lines (Ellsworth Street)
4. A request for a special exception to the visual obstruction regulations is made to locate and maintain an 8' 9" high wood fence and a 6' high solid wood gate located within both 20' visibility triangles at the driveway approaches into the site from Ellsworth Street.

UPDATE (12-2-22):

On November 14, 2022, the Board of Adjustment Panel C held this case to the December 12th public hearing date. As of December 2, 2022, the applicant had submitted no additional or revised materials to staff.

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.

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- (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.

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.

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 (front yard variance):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-7.5(A) single family zoning district due to its restrictive area, slightly irregular shape and slightly sloped with

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two front setbacks causing less area to be built compared to 20 other lots in the same R-7.5(A) single family zoning district. Ultimately, the property cannot be developed in a manner commensurate with the development upon five other parcels of land with the same the same R-7.5(A) single family zoning district.

- The applicant submitted a document (Attachment A) indicating, among other things, that the proposed pool addition on the subject site is commensurate to 20 other lots in the same R-7.5(A) single family zoning district.

STAFF RECOMMENDATION (fence standards regulations):

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

STAFF RECOMMENDATION (visual obstruction special exceptions 20-foot visibility triangles):

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 special exception will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making.

The Sustainable Development and Construction Department Senior Engineer has no objections to the proposed requests to encroach into the required visual obstruction special exceptions to both 20-foot visibility triangles at the driveway approaches. (Attachment B).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5(A) Single Family District
<u>North:</u>	R-7.5(A) Single Family District
<u>South:</u>	R-7.5(A) Single Family District
<u>East:</u>	R-7.5(A) Single Family District
<u>West:</u>	R-7.5(A) Single Family District

Land Use:

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

Zoning/BDA History:

There has been one related board or zoning cases in the immediate vicinity within the last five years.

- BDA189-022: On February 19, 2019, Panel C denied a variance to the front yard setback regulations without prejudice and granted a special exception to the height requirements to maintain an eight-foot-high fence in one of the site's two required front yards (Williamson) at 3956 Frontier Lane.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

This request focuses on maintaining an approximately 768 square-foot pool located 5' from one of the site's two front property lines (Ellsworth Street) or 25' into this 30-foot recorded front yard setback on a site that is developed with a single-family structure.

Structures on lots zoned R-7.5(A) single family district must have a minimum front yard setback of 25'. However, the subdivision plat was recorded with a 30' front yard setback for Jerome Way, now Frontier Lane and Ellsworth Street. A site plan has been submitted denoting the existing pool structure located 5' from one of the two front property lines (Ellsworth Street). The site plan shows that approximately 75 percent of the pool structure will be in the site's 30' front yard setback. Note that the city of Dallas issued a permit for the pool. The permit was issued in error.

The subject site is slightly irregular in shape, slightly sloped and the lot is approximately 11,154 square feet in area. R-7.5(A) single family zoning district requires lots within this area to have a minimum lot size of 7,500 square feet.

The applicant submitted a document (Attachment A) indicating, among other things, that the proposed pool structure on the subject site is commensurate to five other lots in the same R-7.5(A) single family zoning district. Attachment A also notes the lot area to home size is 50 percent while 19 other lots have less than 50 percent to the lot area to home size. This may be adjudicated to the lot having two front yards.

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 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 zoning classification.

If the board were to grant this front yard setback variance request and impose the submitted site plan as a condition, the pool structure in the front yard setback would be limited to what is shown on this document. Granting this special exception request will not provide any relief to the Dallas Development Code regulations other than for an approximately 768 square-foot located 5' from the site's front property line or 25 feet into the 30-foot recorded front yard setback on a site that is developed with a 5, 551 square foot two-story residential structure.

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

These requests focus on constructing and maintaining an 8' 9" high solid wood fence and a 6' high solid wood gate in one of the site's two front property lines (Ellsworth Street) and maintaining this fence and gate with fence panels with a surface area that is less than 50 percent open and less than

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5' from the front lot line in one of the site's two front property lines (Ellsworth Street).

The requests for special exceptions to the fence standards regulations related to height and fence panel materials/location from one of the site's two recorded front property lines (Ellsworth Street):

- constructing and maintaining an 8' 9" high solid wood fence and a 6' tall solid wood gate in one of the site's two front property lines (Ellsworth Street) and maintaining this fence and gate with fence panels with a surface area that is less than 50 percent open and less than 5' from the front lot line in one of the site's two front property lines (Ellsworth Street).

Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard. As noted, the proposed fence would be within the required 30' platted front yard setback.

Additionally, the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five from the front lot line.

The submitted site plan and revised elevation denotes the proposed 8' 9" high solid wood panel fence with a 6' tall wood panel gates located within the required front yard and along the property line.

The following additional information was gleaned from the submitted site plan:

- The proposed/existing fence consists of a 6' tall cedar fence set on top of a 2'9" tall retaining wall with a 6' gate and it is approximately 45 feet in length parallel to Ellsworth Street to the front property line of this street.
- The distance between the proposed fence and the pavement line is 11'. The fence is located at the property line.

Staff conducted a field visit of the site and surrounding area and noted several fences that appeared to be above 4' in-height in the required front yard on Williamson Road and at Chantilly Lane and Frontier Lane.

As of December 2, 2022, 1 letter have been received in opposition and no letters in support of this request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of 4' and to location and materials located on Ellsworth Street will not adversely affect neighboring property.

Granting these special exceptions to the fence standards related to the height and opacity would require the proposal exceeding 4' in-height in the front yard setbacks located in one of the site's two front property lines (Ellsworth Street) and exceeding 50 percent opacity to be maintained in the locations and of the heights and materials as shown on site plan and revised elevation.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions 20' visibility triangles):

These requests for special exceptions to the visual obstruction regulations focus on constructing and maintaining portions of the 8' 9" solid wood fence and a 6' tall solid wood gate within the required 20-foot visibility triangle at the driveway approaches into the site on Ellsworth Street.

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The Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45' visibility triangles at street intersections and 20' visibility triangles at drive approaches and at alleys on properties zoned single family); and
- between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The applicant is requesting special exceptions to the visual obstruction regulations for the two required 20' visibility triangles on each side of the driveway into the site on Ellsworth Street.

The applicant submitted a site plan and revised elevation indicating portions of the 8' 9" high solid wood fence and a 6' tall solid wood gate within the 20' visibility triangle located on the north and south sides of the driveway into the site on Ellsworth Street.

The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

As of December 2, 2022, one letter has been received in opposition and no letters support have been received of this request.

The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations, to locate and maintain portions of the of the 8' 9" high solid wood fence and a 6' tall solid wood gate within the required 20' visibility triangle at the driveway approaches, do not constitute a traffic hazard.

Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and revised elevation would require the fence exceeding 4' in-height in the front yard setback and all visual obstructions to be constructed in the locations and heights as shown on these documents.

Timeline:

- | | |
|-------------------|--|
| August 26, 2022: | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report. |
| October 13, 2022: | The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. |
| October 14, 2022: | The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information: <ul style="list-style-type: none">• an attachment that provided the public hearing date and panel that will consider the application; the October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 4th deadline to submit additional evidence to be incorporated into the board's docket materials. |

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

October 24, 2022: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**)

October 27, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included the Development Services Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, The Development Services Chief Planner, Development Service Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Transportation Development Services Senior Engineer, Development Services Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

October 31, 2022: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked “no objection to existing encroachment to visibility triangle at private residential driveway on Ellsworth Street” (**Attachment B**).

November 1, 2022: The applicant submitted a revised fence elevation drawing to staff with new materials for the fence (**Attachment C**)

November 14, 2022: The Board of Adjustment Panel C conducted a public hearing on this application, and delayed action on this application until their next public hearing to be held on December 12, 2022.

November 16, 2022: The Senior Planner wrote the applicant a letter of the board’s action; the November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd deadline to submit additional evidence to be incorporated into the Board’s docket materials.

November 29, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, the Development Services Chief Planner, the Assistant City Attorney to the Board, and the Senior Planner.

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

BOARD OF ADJUSTMENT ACTION NOVEMBER 14, 2022

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

APPEARING IN OPPOSITION: Pam Wilson 3933 Frontier Ln. Dallas, TX
Susan Wasilewski 6946 Ellsworth Ave. Dallas, TX
Valerie Hendrickse 3945 Frontier Ln. Dallas, TX
William Hendrickse 3945 Frontier Ln. Dallas, TX

MOTION: **Sashington**

I move that the Board of Adjustment, in Appeal No. BDA 212-105, **hold** this matter under advisement until **December 12, 2022**.

SECONDED: **Fleming**

AYES: 4 – Pollock, Sashington, Fleming, and Slade

NAYS: 1 – Robert Agnich

MOTION PASSED 4 – 1

Speakers:

For: Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

Against: None.

Motion

I move that the Board of Adjustment, in Appeal No. BDA 212-105, **hold** this matter under advisement until **February 23, 2023**.

Maker:	Jared Slade				
Second:	Judy Pollock				
Results:	5-0				
		Ayes:	-	5	Judy Pollock, Roger Sashington, Rodney Milliken, and Jared Slade, Robert Agnich
		Against:	-	0	

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ADJOURNMENT

After all business of the Board of Adjustment had been considered, Vice-Chair Agnich moved to adjourn the meeting at **3:08 P.M.**



Required Signature:
LaTonia Jackson, Board Secretary
Development Services Dept.

2/23/23

Date



Required Signature:
Steve Long, Interim Board Administrator
Development Services Dept.

2-23-23

Date



Required Signature:
Robert Agnich, Vice-Chair
Board of Adjustment

2/23/2023

Date