

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL COUNCIL CHAMBERS  
WEDNESDAY, AUGUST 22, 2018**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Chair, Ruth Torres, regular member, Marla Beikman, regular member, Terrance Perkins, regular member, Philip Sahuc, alternate member, Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Chair, Ruth Torres, regular member, Marla Beikman, regular member, Terrance Perkins, regular member, Philip Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/ Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, David Nevarez, Engineering, Elaine Hill, Board Secretary, Carolina Yumet, Senior Planner

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/ Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, David Nevarez, Engineering, Elaine Hill, Board Secretary, Carolina Yumet, Senior Planner, Neva Dean, Assistant Director

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**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 22, 2018 docket.**

**BOARD OF ADJUSTMENT ACTION AUGUST 22, 2018**

**1:06 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B June 19, 2018 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: AUGUST 22, 2018**

**MOTION:** None

The minutes were approved.

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**FILE NUMBER:** BDA178-077(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Rosalba Requena Urias for a special exception to the fence standards regulations at 955 Spiceberry Court. This property is more fully described as Lot 39, Block C/6682, and is zoned R-5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain an 8-foot-high fence in a required front yard, which will require a 4 foot special exception to the fence standards regulations.

**LOCATION:** 955 Spiceberry Court

**APPLICANT:** Rosalba Requena Urias

**REQUESTS:**

A request for a special exception to the fence standards regulations related to height of 4' is made to maintain a 6' 7" - 8' high fence in the required front yard on a site developed with a single-family home. The existing fence consist of two segments, a 6' 7" high wrought iron/ board-on-board wood fence segment parallel to Spiceberry Court and an 8' high corrugated metal fence segment perpendicular to Spiceberry Court.

(Note that this application does not include any request to remedy the existing prohibited fence material (corrugated metal) and the existing fence panels with surface area that are less than 50 percent open located less than 5' from the front lot lines.)

**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-5 (A) (Single family district 5,000 square feet)  
North: R-5 (A) (Single family district 5,000 square feet)  
South: R-5 (A) (Single family district 5,000 square feet)  
East: R-5 (A) (Single family district 5,000 square feet)  
West: R-5 (A) (Single family district 5,000 square feet)

### **Land Use:**

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

### **Zoning/BDA History:**

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

## **GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the fence height of 4' focuses on maintaining a 6' 7" - 8' high fence in the required front yard on a site developed with a single-family home. The existing fence consist of two segments, a 6' 7" high wrought iron/board-on-board wood fence segment parallel to Spiceberry Court and an 8' high corrugated metal fence segment perpendicular to Spiceberry Court.
- This application does not include any request to remedy the existing prohibited fence material (corrugated metal) and the existing fence panels with surface area that are less than 50 percent open located less than 5' from the front lot lines.
- The applicant claims that the she purchased the home in October 2015 with the existing fence
- The applicant request is to the fence standards regulations related to height only.
- On July 26, 2018, the applicant submitted documentation alleging that the documents demonstrate the prohibited fence material and fence panels with surface area that are less than 50 percent open located less than 5' from the front lot lines are legally nonconforming (See attachment A).
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.

- The property is located in an R-5(A) zoning district which requires a minimum front yard setback of 20 feet.
- The applicant had submitted a site plan and elevation that shows the proposal in the front yard setback reaching a maximum height of 8’.
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 74’ in length parallel to the Spiceberry Court, and 20’ perpendicular to Spiceberry Court on the north side of the site in this front yard setback.
  - The proposal is represented as being located approximately on the Spiceberry Court front property line. (The distance between the fence and the pavement line is approximately 10’).
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area and noted two solid wood fences that appeared to be above 6’ in height located at Laneyvale Avenue at Spiceberry Lane. Note that these properties have no recorded BDA history.
- As of August 12th, no letters in opposition have been submitted, and a petition with 5 signatures have been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to fence height of 4’ will not adversely affect neighboring property.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal to be maintained in the location and of the heights as shown on these documents.
- Granting this request for a special exception to the fence standards regulations related to height in the required front yard would provide no relief to remedy the existing prohibited fence material (corrugated metal) and the existing fence panels with surface area that are less than 50 percent open located less than 5’ from the front lot lines.

**Timeline:**

- April 19, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 10, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- July 11, 2018: 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and

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

July 26, 2018: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION AUGUST 22, 2018**

APPEARING IN FAVOR: Rosalba Urias

APPEARING IN OPPOSITION: No One

MOTION: **Sahuc**

I move that the Board of Adjustment, in Appeal No. BDA 178-077, on application of Rosalba Requena Urias, **deny** the special exception requested by this applicant to maintain an eight-foot high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Perkins**

AYES: 0

NAYS: 5 - Hounsel, Torres, Beikman, Sahuc, Perkins

MOTION FAILED: 0 – 5

MOTION: **Sahuc**

I move that the Board of Adjustment, in Appeal No. BDA 178-077, on application of Rosalba Requena Urias, **grant** the request of this applicant to construct and/or maintain an eight-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.

**NOTE:** IF A MOTION TO GRANT ALL OR A PORTION OF THE APPLICANT'S REQUEST DOES NOT GET FOUR CONCURRING VOTES, THE MOTION FAILS.

**SECONDED:** Torres

**AYES:** 4 - Hounsel, Torres, Beikman, Sahuc,

**NAYS:** 1 - Perkins

**MOTION PASSED:** 4– 1

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**FILE NUMBER:** BDA178-078(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Lauren Harner for special exceptions to the visual obstruction regulations at 5946 McCommas Boulevard. This property is more fully described as Lot 3, Block A/2873, and is zoned CD 11, which requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 5946 McCommas Boulevard

**APPLICANT:** Lauren Harner

**REQUESTS:**

A request for a special exception to the visual obstruction regulations are made to replace, construct and maintain portions of an 8' high solid wood fence and maintain portions of a wrought iron gate in the two 20' visibility triangles on both sides of the driveway into the site from Concho Street on a site developed with a single family home.

**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:**

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the request.

- Staff concluded that request for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items to be located in the visibility triangles do not constitute a traffic hazard.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: CD 11 (Conservation District)  
North: CD 11 (Conservation District)  
South: CD 11 (Conservation District)  
East: CD 11 (Conservation District)  
West: CD 11 (Conservation District)

#### **Land Use:**

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

#### **Zoning/BDA History:**

1. BDA178-044, Property at 5947 Morningside Avenue (the lot south to the subject site)  
On April 16, 2018, the Board of Adjustment Panel C granted requests for a special exceptions to the visual obstruction regulations to maintain a 6' 2" high solid wood fence with a 6' high swing wood gate in the two 20' visibility triangles on both sides of the driveway into the site from Concho Street, and in the 20' visibility triangle at where the alley meets Concho Street and imposed the following condition: Compliance with submitted revised site plan elevation would limit the items to be maintained in the 20' drive approach visibility triangles into the site from Concho Street and in the 20' visibility triangle where the alley meets Concho Street, to that what is shown on these documents – a 6' 2" high solid wood fence and a 6' high wood swing gate.

### **GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the visual obstruction regulations focus on replacing, constructing, and maintaining portions of an 8' high solid wood fence and maintaining portions of a wrought iron gate in the two 20' visibility triangles on both

sides of the driveway into the site from Concho Street on a site developed with a single family home.

- Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The property is located in Conservation District 11 which requires the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.
- A site plan and an elevation have been submitted indicating portions of “the 8’ high solid wood fence and portions of a wrought iron gate” located in the two 20’ visibility triangles on both sides of the driveway into the site from Concho Street.
- On July 23, 2018, the applicant submitted a revised elevation (attachment A) for the 8’ high solid wood fence and the wrought iron gate in the two 20’ visibility triangles on both sides of the driveway into the site from Concho Street.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Engineering staff reviewed the request and has no objection to any of the obstructions shown on the plan within the visibility triangles”.
- The applicant has the burden of proof in establishing how granting the request for special exceptions, to the visual obstruction regulations, to replace, construct and maintain portions of an 8’ high solid wood fence and wrought iron gate in the two 20’ visibility triangles on both sides of the driveway into the site from Concho Street do not constitute a traffic hazard.
- Granting these request with a condition imposed that the applicant complies with the submitted site plan and revised elevation would limit the items located in the 20’ drive approach visibility triangles into the site from Concho Street to that what is shown on these documents – Portions of an 8’ high solid wood fence and portions of a wrought iron gate.

**Timeline:**

April 24, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 11, 2018: The Board Administrator emailed the applicant/owner the following information:



- an attachment that provided the public hearing date and panel that will consider the application; the August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standards that the board will use in their decision to approve or deny the requests; and
- The Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

July 23, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A).

August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

August 9, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Engineering staff reviewed the request and has no objection to any of the obstructions shown on the plan within the visibility triangles”.

**BOARD OF ADJUSTMENT ACTION AUGUST 22, 2018**

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Beikmam**

I move to **grant** the Board of Adjustment application **BDA187-078** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

**NOTE: IF A MOTION TO GRANT ALL OR A PORTION OF THE APPLICANT’S REQUEST DOES NOT GET FOUR CONCURRING VOTES, THE MOTION FAILS.**

**SECONDED: Sahuc**  
**AYES: 5 – Hounsel, Torres, Beikman, Sahuc, Perkins**  
**NAYS: 0**  
**MOTION PASSED: 5 – 0 (unanimously)**

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**FILE NUMBER:** BDA178-048(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Eric Messer for a variance to the front yard setback regulations at 11021 Royalshire Drive. This property is more fully described as Lot 4, Block 3/5500 and is zoned R-16(A), which requires a front yard setback of 35 feet. The applicant proposes to construct and/or maintain a structure and provide a 10 foot front yard setback, which will require a 25 foot variance to the front yard setback regulations.

**LOCATION:** 11021 Royalshire Drive

**APPLICANT:** Eric Messer

**REQUEST:**

A request for a variance to the front yard setback regulations of 25’ is made to construct and maintain a two-story single family home structure with a total “slab area” of approximately 5,800 square feet or with a total “home size” of approximately 6,100 square feet, part of which is to be located 10’ from one of the site’s two front property lines (Rex Drive) or 25’ into this 35’ front yard setback on a site that is undeveloped.

**STANDARD FOR A VARIANCE:**

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

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

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-16(A) zoning district in that it is restrictive in area due to having two, 35' front yard setbacks when most lots in this zoning district have one 35' front yard setback. The 95' wide subject site has 50' of developable width available once a 35' front yard setback is accounted for on the north and a 10' side yard setback is accounted for on the south. If the lot were more typical to others in the zoning district with only one front yard setback, the 95' wide site would have 75' of developable width.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that that the total home size of the proposed home on the subject site at approximately 6,100 square feet is commensurate to 31 other homes in the same R-16(A) zoning district that have average home size of approximately 6,400 square feet.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16(A) (Single family district 16000 square-feet)  
North: R-16(A) (Single family district 16000 square-feet)  
South: R-16(A) (Single family district 16000 square-feet)  
East: R-16(A) (Single family district 16000 square-feet)  
West: R-16(A) (Single family district 16000 square-feet)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 167-076, Property at 6143 Royalton Drive (Property located one block south of subject site)

On August 14, 2017, the Board of Adjustment Panel C denied requests for variances to the front yard setback regulations made to construct and maintain a single family structure in the front yard setbacks on one of the site's two front property lines (Azalea Drive).

The case report stated the request was made to construct and maintain a single family structure, part of which would be located 14' from the site's front property line) or 21' into the 35' front yard setback along Azalea Lane.

## **GENERAL FACTS /STAFF ANALYSIS:**

- This request for variance to the front yard setback requirement of 25' focuses on constructing and maintaining a two-story single family home structure with a total "slab area" of approximately 5,800 square feet or with a total "home size" of approximately 6,100 square feet, part of which is to be located 10' from one of the site's two front property lines (Rex Drive) or 25' into this 35' front yard setback on a site that is undeveloped.
- The property is located in an R-16(A) zoning district which requires a minimum front yard setback of 35 feet.
- The subject site is located at the southwest corner of Royalshire Drive and Rex Drive. Regardless of how the structure is proposed to be oriented to front Royalshire Drive, the subject site has a 35' front yard setback along both street frontages. The site has a 35' front yard setback along Royalshire Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 35' front yard setback along Rex Drive, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 10' side yard setback is required. However, the site's Rex Drive frontage that would function as a side yard on the property is treated as a front yard setback nonetheless, to maintain the continuity of the established front yard setback established by the lots to the west that front/are oriented northward towards Rex Drive.
- The submitted site plan indicates the proposed structure is located 10' from the Rex Drive's front property line or 25' into this 35' front yard setback.
- According to DCAD records, there are "no main improvement" or "no additional improvements for property addressed at 11021 Royalshire Drive.
- The subject site is flat, rectangular in shape (approximately 160' x 95'), and according to the submitted application is 0.348 acres (or approximately 15,200 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- Most lots in the R-16(A) zoning district have one 35' front yard setback, two 10' side yard setbacks, and one 10' rear yard setback; this site has two 35' front yard setbacks and two 10' side yard setbacks.
- The site plan represents that approximately 1/3 of the structure is located in the 35' Rex Drive front yard setback.
- The 95' wide subject site has 50' of developable width available once a 35' front yard setback is accounted for on the north and a 10' side yard setback is accounted for on the south. If the lot were more typical to others in the zoning district with only one front yard setback, the 95' wide site would have 75' of developable width.
- No variance would be necessary if the Rex Drive frontage were a side yard since the site plan represents that the proposed home is 10' from the Rex Drive property line and the side yard setback for properties zoned R-16(A) is 10'.
- The applicant has submitted a document indicating among other things that that the total home size of the proposed home on the subject site is approximately 6100 square feet, and the average of 31 other properties in the same zoning is approximately 6,400 square feet.
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(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-16(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 10’ from the site’s Rex Drive front property line (or 25’ into this 35’ front yard setback).

**Timeline:**

February 20, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 11, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 12, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 11<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 25, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

May 1, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the

Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

May 23, 2018: The public hearing in which this application was scheduled was canceled to due lack of quorum of members. This application was rescheduled to be heard by Panel B on June 20, 2018. The Board Administrator emailed the applicant of this cancellation and of this rescheduling.

June 5, 2018: 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 Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

June 20, 2018: The Board of Adjustment Panel C conducted a public hearing on this application, and delayed action on this application until the next public hearing to be held on August 22, 2018.

June 20, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment C).

June 21, 2018: The Board Administrator wrote the applicant a letter of the board's action; the August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION    AUGUST 22, 2018**

**APPEARING IN FAVOR:**            Eric Messer, 6312 Widgeon Dr., Plano, TX 75024  
John Helstowski, 13601 Preston Rd., #E920, Dallas, TX 75240

**APPEARING IN OPPOSITION:**    Robin Bonn, 6207 Rex Dr., Dallas, TX 75230  
Amiee Fagan, 6206 Rex Dr., Dallas, TX 75230  
Will Snyder, 4445 Alpha Rd., Dallas, TX 75244  
Mary Kay Guevel, 6115 Rex Dr., Dallas, TX 75230

**MOTION:    Beikman**

I move that the Board of Adjustment, in Appeal No. BDA 178-048, on application of Eric Messer, **deny** the variance to the front yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

**SECONDED:    Sahuc**

**AYES:** 4 - Hounsel, Beikman, Perkins, Sahuc

**NAYS:** 1 - Torres

**MOTION PASSED:** 4 - 1

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**FILE NUMBER:**    BDA178-069(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Winfield Moore, represented by Chris Bowers, to appeal the decision of the administrative official at 1520 Olympia Drive. This property is more fully described as Lot 27, Block 8/3826, and is zoned CD 13, which the building official is required to revoke a permit if he or she determines that the permit was issued in error. The applicant proposes to appeal the decision of an administrative official in the revocation of a building permit.

**LOCATION:**            1520 Olympia Drive

**APPLICANT:** Winfield Moore  
Represented by Chris Bowers

**REQUEST:**

A request is made to “appeal the decision of the Building Official to revoke permit number 1706271135” on a site developed with a single family home.

**STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov’t Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 13 (Conservation District)  
North: CD 13 (Conservation District)  
South: CD 13 (Conservation District)  
East: CD 13 (Conservation District)  
West: CD 13 (Conservation District)

**Land Use:**

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

**Zoning/BDA History:**

While there has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site, note that the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 11 feet, 3 inches on the subject site on March 19, 2018 where the board imposed the submitted revised site plan as a condition (BDA178-030). The case report stated that the request was made to construct and maintain a “ventless firebox” and “planter/retaining wall” structures on a property developed with a single family home, which, according to the



submitted revised site plan, would be located as close as 20' 3" from the front property line or as much as 11' 3" into the 31' 6" front yard setback.

**GENERAL FACTS/STAFF ANALYSIS:**

- The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

**Timeline:**

March 28, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 10, 2018: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the appeal date and panel that will consider the appeal; the August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of appeal); and the August 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

August 9, 2018: The assistant city attorney assisting the administrative official submitted documentation on this appeal to the Board Administrator (see Attachment A).

**BOARD OF ADJUSTMENT ACTION    AUGUST 22, 2018**

**APPEARING IN FAVOR:**                      Chris Bowers, 1800 Valley View Lane, #360,  
Farmers  
Branch, TX 75234  
Winfield Moore, 1520 Olympia Drive, Dallas, TX  
75208  
Dale Minor, 1520 Olympia Drive, Dallas, TX 75208

**APPEARING IN OPPOSITION:**    Justin Roy, 1500 Marilla, 7DN, Dallas, TX 75201  
Bill Hersch, 320 E. Jefferson Blvd., #105, Dallas, TX

**MOTION: Beikman**

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. BDA 178-069, on application of Winfield Moore, represented by Chris Bowers, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **reverse** the decision of the administrative official and **grant** the relief requested by this applicant.

**SECONDED: Perkins**

**AYES:** 5 – Hounsel, Torres, Beikman, Perkins, Sahuc

**NAYS:** 0

**MOTION PASSED:** 5 - 0 (unanimously)

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**FILE NUMBER:**    BDA178-086(OA)

**BUILDING OFFICIAL’S REPORT:** Application of James Y. Robb, represented by Santos Martinez of Masterplan, for a variance to the front yard setback regulations, a special exception to single family use regulations, and special exceptions to the fence standards regulations at 5505 Chatham Hill Road. This property is more fully described as Lot 22, Block 7/5597, and is zoned R-1ac(A), which requires a front yard setback of 40 feet, limits the number of dwelling units to one, limits the height of a fence in the front yard to 4 feet, and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and/or maintain a structure and provide a 11 foot 3 inch front yard setback, which will require a 28 foot 9 inch variance to the front yard setback regulations, to construct and/or maintain an additional dwelling unit, which will require a special exception to the single family use regulations, and to construct and/or maintain a 9 foot high fence in a required front yard, which will require a 5 foot special exception to the fence standards regulations, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations.

**LOCATION:**                      5505 Chatham Hill Road

**APPLICANT:**                      James Y. Robb  
Represented by Santos Martinez of Masterplan

## **REQUESTS:**

The following requests have been made on a site that is undeveloped:

1. A request for a variance to the front yard setback regulations of 28' 9" is made to construct and maintain a one-story additional dwelling unit structure with a total "additional dwelling size" of approximately 5880 square feet, part of which is to be located 11' 3" from one of the site's two front property lines (Hollow Way Road) or 28' 9" into this 40' front yard setback;
2. A request for a special exception to the single family use regulations is made to construct and maintain a 1-story "additional dwelling unit" structure;
3. A request for a special exception to the fence standards related to fence height of 5' is made to construct and maintain fences higher than 4' in height in the one of the site's two 40' front yard setbacks (Hathaway Street) – a 7' to 8' solid masonry fence with sliding gates and a 7' high chain-link fence;
4. A request for a special exception to the fence standards related to fence height of 5' is made to construct and maintain fences higher than 4' in height in the other 40' front yard setback (Hollow Way Road) – a 6' 6" to 9' solid masonry fence with sliding gates and a 7' high chain-link fence; and
5. Requests for special exceptions are made to construct and maintain fence panels with surface areas that are less than 50 percent open:
  - a) related to a 7' to 8' solid masonry fence with sliding gates located on the Hathaway Street front lot line (or less than 5' from this front lot line); and
  - b) related to a 6' 6" to 9' solid masonry fence with sliding gates) located on the Hollow Way Road front lot line (or less than 5' from this front lot line).

## **STANDARD FOR A VARIANCE:**

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

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

## **STANDARD FOR A SPECIAL EXCEPTION TO 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 use of the additional dwelling unit as rental accommodations.

**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 (variance):**

Denial

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the August 7<sup>th</sup> staff review team meeting that while staff recognized that the site is irregular in shape, of a restrictive area due to its two front yard setbacks and with a storm easement that splits the property into unequal parts, and with slope that ranges from eight percent to 33 percent across sections of the property, the applicant had not substantiated how the variance is necessary to permit development of the subject site that differs from other parcels of land that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-1ac(A) zoning district.

**STAFF RECOMMENDATION (additional dwelling unit):**

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.

**STAFF RECOMMENDATION (fence standards):**

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 1 acre)

North: R-1ac (A) (Single family district 1 acre)  
South: R-1ac (A) (Single family district 1 acre)  
East: R-1ac (A) (Single family district 1 acre)  
West: R-1ac (A) (Single family district 1 acre)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA167-012, Property located at 5506 Deloache Avenue (three lots to the north of the site)  
On February 22, 2017, the Board of Adjustment Panel B granted a request for a special exceptions to the fence height regulations of 4' and to the fence materials to maintain fence panels with surface areas that are less than 50 percent open located on the front lot line (or less than 5' from this front lot line). The Board of Adjustment imposed the submitted revised site plan, landscape plan, and elevation as a condition.  
The case report stated that the request was made in conjunction with constructing and maintaining a 7' 6" high open wrought iron fence and gate with 8' high stone columns and in the Hollow Way Road front yard setback, a 7' 6" high open wrought iron fence and gate with 8' high stone columns, and a 7' 6" high board-on-board wood fence with 8' high stone columns in the front yard setback.
2. BDA156-053, Property located at 9362 Hollow Way Road (two lots to the north of the site)  
On May 18, 2016, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 6', and imposed the submitted site plan/elevation as a condition.  
The case report stated that the request was made mostly a 6' – 6' 6" high "decorative wrought iron" fence with 8' high masonry columns parallel to the street; two entry features: on the north side, an 8' – 8' 6" high "secondary" entry gate with 8' high columns; on the south side, a 10' high "main" entry gate with 10' high columns flanked by two approximately 10' long, 8' high solid masonry wing walls; and a 6' high solid masonry fence with a 7' high stone column perpendicular to

the street on the south side of the site in the 40' front yard setback, and a 7' 9" high solid masonry fence with an 8' stone column perpendicular to the street on the north side of the site in the 40' front yard setback.

3. BDA95-131, Property located at 5505 Deloache Avenue (one block north of the subject site)

On November 14, 1995, the Board of Adjustment granted requests for special exceptions to the fence height and visual obstruction regulations, and imposed the following condition to the request: Compliance with a revised site/landscape plan and elevation to be submitted to staff by the applicant to comply with the spirit and intent of the foregoing portion of this motion (a maximum height of 6' for the fence, 6.5' for the columns, and 8' for the entrance gate/columns) is required.

### **GENERAL FACTS/STAFF ANALYSIS (variance):**

- This request for variance to the front yard setback regulations of up to 28' 9" focuses on constructing and maintaining a one-story additional dwelling unit structure with a total "additional dwelling size" of approximately 5880 square feet, part of which is to be located 11' 3" from one of the site's two front property lines (Hollow Way Road) or 28' 9" into this 40' front yard setback.
- The property is located in an R-1ac (A) zoning district which requires a minimum front yard setback of 40 feet.
- The subject site has two 40' front yard setbacks (one on the east along Hathaway Street, the other on the west along Hollow Way Road) since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- On July 18, 2018, the applicant submitted a revised site plan and revised elevation (Attachment B) representing the revised location for the proposed additional dwelling unit structure in the site's front yard setback on Hollow Way Road.
- The submitted revised site plan indicates that portion of the proposed one-story additional dwelling unit structure is located 11' 3" from the Hollow Way Road's front property line or 28' 9" into this 40' front yard setback.
- The subject site is sloped, irregular in shape, and according to the applicant's representative, is 3.43 acres (or approximately 149,410 square feet) in area. The site is zoned A-1ac (A) where lots typically are one acre or 43,560 square feet in area. The site has a storm drainage easement that splits the property into unequal parts.
- The revised site plan indicates that there are over 70 mature trees that represent over 1,000 calipers inches on the property.
- The applicant submitted a document indicating that that the total home size of the proposed main structure on the subject site is approximately 12,200 square feet,

and the average of 15 other properties in the same zoning is approximately 10,200 square feet.

- According to DCAD records, there are “no main improvement” or “no additional improvements for property addressed at 5505 Chatham Hill Road.
- 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-1ac (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-1ac(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted revised site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case an additional dwelling unit structure located 11’ 3” from the site’s Hollow Way Road front property line or 28’ 9” into this 40’ front yard setback.

#### **GENERAL FACTS/STAFF ANALYSIS (additional dwelling unit special exception):**

- This request for a special exception to the single family use regulations focuses on constructing and maintaining an existing 1-story additional “dwelling unit” structure on a site that is undeveloped.
- The site is zoned R-1ac (A) where the Dallas Development Code permits one dwelling unit per lot.
- The single family use regulations of the Dallas Development Code states 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 contrary to the public interest; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines “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.”
- The Dallas Development Code defines “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.”
- The Dallas Development Code defines “bathroom” as “any room used for personal hygiene and containing a shower or bathtub, or containing a toilet and sink.”

- The Dallas Development Code defines “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, sun rooms, and other similar rooms are considered bedrooms.”
- The submitted revised site plan denotes the locations of two building footprints, the larger of the two with what appears to be the existing single family main structure and the smaller of the two denoted as “one story frame”.
- The submitted revised floor plan of what appears to be the “one story frame” denoted on the revised site plan, shows a number of rooms/features that Building Inspection has determined, makes it an additional dwelling unit - that is per Code definition: “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.”
- This request centers on the function of what is proposed to be inside the smaller structure on the site – the “living quarters” structure, specifically its collection of rooms/features shown on the floor plan.
- The application states a request has been made for: Additional dwelling unit does not adversely affect neighboring parties because this guess house is intended to entertain guests by the pool and provide a separate area for family members.
- According to DCAD records, there are “no main improvement” or “no additional improvements for property addressed at 5505 Chatham Hill Road.
- 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.
- If the Board were to approve this request, the Board may choose to impose a condition that the applicant comply with the revised site plan if they feel it is necessary to ensure that the special exception will not adversely affect neighboring properties. But 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.
- If the Board were to grant this request, Building Inspection would view the structure denoted on the submitted revised site plan as “one story frame” as an additional “dwelling unit”.
- If the Board were to deny this request, Building Inspection would view the structure denoted on the submitted revised site plan as “one story frame” as an “accessory structure” whereby the applicant will be required to comply with the accessory structure code provisions set forth in Section 51A-4.209(6) – provisions including but not limited to how the floor area of any individual accessory structure on a lot, excluding floor area used for parking, may not exceed 25 percent the floor area of the main building.

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



- The requests for special exceptions to the fence standards regulations related to height and fence panel materials/location from a front lot line focus on:
  - 1) constructing and maintaining fences higher than 4' in height in the one of the site's two 40' front yard setbacks (Hathaway Street) – a 7' to 8' solid masonry fence with sliding gates and a 7' high chain-link fence.
  - 2) constructing and maintaining fences higher than 4' in height in the one of the site's two 40' front yard setbacks (Hollow Way Road) – a 6' 6" to 9' solid masonry fence with sliding gates and a 7' high chain-link fence.
  - 3) constructing and maintaining the aforementioned fences in these front yard setbacks with the aforementioned proposed fences with panels with surface areas that are less than 50 percent open:
    - a) related to a 7' to 8' solid masonry fence with sliding gates located on the Hathaway Street front lot line (or less than 5' from this front lot line); and
    - b) related to a 6' 6" to 9' solid masonry fence with sliding gates) located on the Hollow Way Road front lot line (or less than 5' from this front lot line).
- The property is located in an R-1ac (A) zoning district which requires a minimum front yard setback of 40 feet.
- 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.
- 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 5' from the front lot line.
- On July 18, 2018, the applicant submitted a revised site plan and elevation (attachment B) representing the revised location for the proposed fences in the front yard setbacks.
- The submitted revised site plan and revised elevation denotes a 7' to 8' solid masonry fence with sliding gates and a 7' high chain-link fence in the Hathaway Street front yard setback and on this front lot line.
- The submitted revised site plan and revised elevation denotes a 6' 6" to 9' solid masonry fence with sliding gates and a 7' high chain-link fence in the Hollow Way Road front yard setback and on this front lot line.
- The following additional information was gleaned from the submitted revised site plan:
  - Along Hathaway Street: the proposal is represented as being approximately 392' (the fence consist of 312' of chain-link and 80' solid masonry material) in length parallel to the street and approximately 40' perpendicular to the street on the north and south side of the site on this required front yard; located approximately at the property front property line or approximately 20' from the pavement line.
  - 1. Along Hollow Way Road: the proposal is represented as being approximately 511' (the fence consist of 306' of chain-link and 206' solid masonry material) in length parallel to the street and approximately 40' perpendicular to the street on the north and south side of the site on this required front yard; located approximately at the front property line or approximately 20' from the pavement line.
- The applicant has submitted revised site plan and revised elevation documents of the proposal:

- a) along Hathaway Street with a fence panel having a surface area that is less than 50 percent open and located less than 5' from this front lot line – a 7' to 8' solid masonry fence approximately 80' in length located on this front lot line; and
  - b) along Hollow Way Road with a fence panel having a surface area that is less than 50 percent open and located less than 5' from this front lot line – a 6' 6" to 9' high solid masonry fence approximately 140' in length located on this front lot line.
- The Board of Adjustment Senior Planner conducted a field visit of the site and surrounding area and noted several other fences that appeared to be above 4' in height along Hollow Way Road and Deloache Avenue located in front yard setback some of which have recorded BDA history (see the Zoning/BDA History section of this case report for details).
  - As of August 10, 2018, no letters have been submitted in support of or in opposition to the request.
  - The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height of 4' and to location and materials on Hathaway Street and Hollow Way Road will not adversely affect neighboring property.
  - Granting these special exceptions to the fence standards related to height of up to 4' and to location and materials in certain areas on the site with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation site plan and revised elevation documents, would require the proposal exceeding 4' in height in the front yard setbacks and in some areas solid fence panels on the front lot line to be maintained in the locations and of the heights and materials as shown on these documents.

**Timeline:**

- May 14, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 11, 2018: The Board 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

- July 18, 2018: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report on this application to the Board Administrator (see Attachment A).
- July 18, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- July 26, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments C).
- August 1, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments D).
- August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.
- August 10, 2018: The applicant's representative submitted additional documentation to staff (see Attachment E). Note that this information was not factored into the staff recommendation since it was submitted after the August 7<sup>th</sup> staff review team meeting.

APPEARING IN FAVOR:

Santo Martinez, 900 Jackson, #640, Dallas, TX 75202  
 John Grove, 37 Woodlawn Avenue, Needham, MA 02492  
 Howard Chu, 2345 Montrose Avenue, #9, Montrose, CA 91020

APPEARING IN OPPOSITION: No one

MOTION 1 of 4: Torres

I move that the Board of Adjustment, in Appeal No. BDA 178-086, on application of James Y. Ross, represented by Santos Martinez of Masterplan, **grant** the 28-foot nine-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this

property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

- Compliance with the submitted revised site plan is required.

**SECOND: Beikman**

**AYES:** 5 - Hounsel, Torres, Beikman, Perkins, Sahuc

**NAYS:** 0

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

**MOTION 2 of 4: Torres**

I move that the Board of Adjustment, in request No. BDA 178-086 on application of James Y. Ross, represented by Santos Martinez of Masterplan, **grant** the request to install and maintain an additional dwelling unit on a site developed with a single family structure and use 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 be used as rental accommodations, and 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:

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

**SECOND: Beikman**

**AYES:** 5 - Hounsel, Torres, Beikman, Perkins, Sahuc

**NAYS:** 0

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

**MOTION 3 of 4:**

I move that the Board of Adjustment, in Appeal No. BDA 178-086, on application of James Y. Ross, represented by Santos Martinez of Masterplan, **grant** the request of this applicant to construct and/or maintain a nine-foot high fence as a special exception to the height requirement for fences in the Dallas Development Code, 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 revised site plan and revised elevation is required.

**SECOND: Sahuc**

**AYES:** 5 - Hounsel, Torres, Beikman, Perkins, Sahuc

**NAYS:** 0

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

**MOTION 4 of 4: Torres**

I move that the Board of Adjustment, in Appeal No. BDA 178-086, on application of James Y. Ross, represented by Santos Martinez of Masterplan, **grant** the request of this applicant to complete and maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as a special exception to the surface area openness requirement for fences in the Dallas Development Code, 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 revised site plan and revised elevation is required.

**SECOND: Beikman**

**AYES:** 5 - Hounsel, Torres, Beikman, Perkins, Sahuc

**NAYS:** 0

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

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**MOTION: Beikman**

I move to adjourn this meeting.

**SECONDED: Hounsel**

**AYES:** 5 – Torres, Beikman, Hounsel, Perkins, Sahuc

**NAYS:** 0

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

**5:34 P.M.** Board Meeting adjourned for **August 22, 2018**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

\*\*\*\*\*

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