

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL COUNCIL CHAMBERS
WEDNESDAY, APRIL 18, 2018**

MEMBERS PRESENT AT BRIEFING: Ruth Torres, Interim Vice-Chair, Marla Beikman, regular member, Matt Shouse, regular member, Philip Sahuc, alternate member, Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Ruth Torres, Interim Vice-Chair, Marla Beikman, regular member, Matt Shouse, regular member, Philip Sahuc, alternate member, Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/ Board Administrator, Kanesia Williams, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, David Nevarez, Engineering, Shombray Irby , Acting Board Secretary, Elaine Hill, Board Secretary, Neva Dean , Assistant Director

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/ Board Administrator, Kanesia Williams, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, David Nevarez, Engineering, Shombray Irby, Acting Board Secretary, Elaine Hill, Board Secretary, Neva Dean, Assistant Director

11:01 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 18, 2018 docket.**

BOARD OF ADJUSTMENT ACTION APRIL 18, 2018

I move to elect Ruth Torres to be Vice- Chair for the Board of Adjustment hearing on April 18, 2018.

MOTION: Beikman

SECONDED: Shouse

AYES: 5 – Torres, Beikman, Shouse, Sahuc, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

1:02 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B March 21, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2018

MOTION: None

The minutes were approved.

FILE NUMBER: BDA178-042(OA)

BUILDING OFFICIAL'S REPORT: Application of Paul E Lewis, represented by Anna Mojica, for a variance to the front yard setback regulations at 1502 S. Denley Drive. This property is more fully described as Lot 1, Block 6/3566 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and/or maintain a structure and provide a 10 foot 6 inch front yard setback, which will require a 14 foot 6 inch variance to the front yard setback regulations.

LOCATION: 1502 S. Denley Drive

**APPLICANT: Paul E Lewis
Represented by Anna Mojica**

REQUEST:

A request for a variance to the front yard setback regulations of 14' 6" is made to construct and maintain a two-story single family home structure with a total "slab area" of approximately 1,260 square feet or with a total "home size" of approximately 1890 square feet, part of which is to be located 10' 6" from one of the site's two front property lines (Edgemont Avenue) or 14' 6" into this 25' 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-7.5(A) zoning district. It is restrictive in area due to having two, 25' front yard setbacks when most lots in this zoning district have one 25' front yard setback. The 46' wide subject site has 16' of developable width available once a 25' front yard setback is accounted for on the northwest and a 5' side yard setback is accounted for on the northeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 46' wide site would have 36' 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 1,890 square feet is commensurate to 6 other homes in the same R-7.5(A) zoning district that have average home size of approximately 2,112 square feet.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is undeveloped. The areas to the north and west are developed with religious uses and single family uses; and the areas to the south, and east 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 variance to the front yard setback regulations of 14' 6", focuses on constructing and maintaining a two-story single family home structure with a total "slab area" of approximately 1,260 square feet or with a total "home size" of approximately 1890 square feet, part of which is to be located 10' 6" from one of the site's two front property lines (Edgemont Avenue) or 14' 6" into this 25' front yard setback on an undeveloped site.
- The property is located in an R-7.5(A) (Single family district 7,500 square-feet) zoning district which requires a minimum front yard setback of 25 feet.
- The subject site is located at the northeast corner of Denley Drive and Edgemont Avenue. Regardless of how the structure is proposed to be oriented to front Denley Drive, the subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along Denley Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25' front yard setback along Edgemont Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. However, the site's Edgemont Avenue frontage that would function as a side yard on the property is treated as a front yard setback nonetheless, to maintain the continuity of the established front yard setback established by the lots to the north that front/are oriented northward towards Edgemont Avenue.
- The submitted site plan indicates that the wall of the proposed structure is located 10' 6" from the Edgemont Avenue front property line or 14' 6" into this 25' front yard setback but the application is made for a variance of "10' 6" to the FYSB on Edgemont Avenue to establish a 10' 6" setback".
- According to DCAD records, there are "no main improvement" or "no additional improvements for property addressed at 1502 S. Denley Drive.
- The subject site is flat, rectangular in shape (approximately 150' x 46'), and according to the submitted application is 0.16 acres (or approximately 6,927.6

square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.

- The site plan represents that approximately 1/3 of the structure is located in the 25' Edgemont Avenue front yard setback.
- The 46' wide subject site has 16' of developable width available once a 25' front yard setback is accounted for on the northwest and a 5' side yard setback is accounted for on the northeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 46' wide site would have 36' of developable width.
- No variance would be necessary if the Edgemont Avenue frontage were a side yard since the site plan represents that the proposed home is 10' 6" from the Edgemont Avenue property line and the side yard setback for properties zoned R-7.5(A) is 5'.
- The applicant has submitted a document indicating among other things that the total home size of the proposed home on the subject site is approximately 1890 square feet, and the average of 6 other properties in the same zoning is approximately 2,112 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document— which in this case is a structure that would be located 10' 6" from the site's Edgemont Avenue front property line (or 14' 6" into this 25' front yard setback).

Timeline:

February 23, 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.

March 13, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 14, 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 March 28th deadline to submit additional evidence for staff to factor into their analysis; and the April 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 29, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

April 3, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION APRIL 18, 2018

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: Beikman

I move that the Board of Adjustment **grant** the following applications 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:

BDA 178-042 – Application of Paul E. Lewis, represented by Anna M. Mojica, for a variance to the front yard setback regulations contained in the Dallas Development Code, is **granted**, subject to the following condition:

- Compliance with the submitted site plan is required.

SECONDED: Shouse

AYES: 5 – Torres, Beikman, Shouse, Sahuc, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-037(OA)

BUILDING OFFICIAL’S REPORT: Application of Monica C. Ofcharik for special exceptions to the standards, and for a special exception to the fence standards regulations, at 10811 Stone Canyon Road. This property is more fully described as Lot 22, Block Y/7288, and is zoned R-13(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. 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, 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.

LOCATION: 10811 Stone Canyon Road

APPLICANT: Monica C. Ofcharik

REQUEST:

The following requests for special exceptions to the fence standards regulations have been made on a site that is developed with a single family home:

- 1) A request for a special exception to the fence standards regulations related to height of 4’ is made to maintain a fence (an 8’ high solid board-on-board wood fence) higher than 4’ in height in one of the site’s two required front yards (Stone Canyon Road); and
- 2) A request for a special exception to the fence standards regulations related to a fence panel with a surface area that is less than 50 percent open is made to maintain an 8’ high solid board-on-board wood fence located on the Stone Canyon Road front lot line (or less than 5’ from this front lot line).

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-13(A) (Single family district 13,000 sf ft.)
North: R-13(A) & R-16(A) (Single family district 13,000 sq. ft. & 16,000 sq. ft.)
South: MF-2(A) & D-(A) (Multifamily district & Duplex District)
East: MF-2(A) (Multifamily district)
West: R-13(A) (Single family district 13,000 sq. ft.)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The requests for special exceptions to the fence standard regulations are twofold. A special exception to the fence standards regulations related to height of 4' is to maintain an 8' high solid board-on-board wood fence in one of the site's two required front yards (Stone Canyon Road). A special exception to the fence standard regulations related to a fence with panels with surface areas less than 50 percent open is made to maintain an 8' high solid board-on-board wood fence located on Stone Canyon Road front lot line (or less than 5' from this front lot line).
- The subject site is zoned R-13(A) which requires a 25' front yard setback.
- 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 site is located at the southwest corner of Stone Canyon Road and Stone Canyon Place.
- Given the single family zoning and location of the corner lot subject site, it has two required front yards. The site has a 25' required front yard caused by a platted building line along Stone Canyon Road and along Stone Canyon Place.
- The applicant has submitted a site plan and elevation of the proposal along Stone Canyon Road with fence panels having a surface area that is less than 50 percent open and located less than 5' from this front lot line.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 44' in length parallel to Stone Canyon Road and approximately 25' perpendicular to Stone Canyon Road on the north and south sides of the site in this front yard setback.
- The proposal is represented as being located at the Stone Canyon Road front property line or approximately 12' from the pavement line

- A multifamily complex fronts the existing fence, with similar height fences in the front yard setbacks.
- The Sustainable Development and Construction Department Senior Planner, conducted a field visit of the site and surrounding area approximately 1000 feet north and south of the site. Staff noted several solid board-on-board wood fences that appeared to be above over 6' in height located along Stone Canyon Road and south of Willcrest Drive. However, these fences, located on the properties along Stone Canyon Road and south of Willcrest Drive, are located in what appears to be side yards therefore most likely permitted by right.
- As of April 6, 2018, no letters had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height over 4' in the front yard setback and related to a fence with panels with surface areas less than 50 percent open less than 5' from the front lot line will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

- January 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.
- March 13, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 13, 2018: The Sustainable Development and Construction Department Senior Planner, emailed the applicant's representative the following information:
- a copy of the application materials including the Building Official's report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the March 28th deadline to submit additional evidence for staff to factor into their analysis; and the April 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- March 28, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

April 3, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION APRIL 18, 2018

APPEARING IN FAVOR: Monica Ofcharik, 10811 Stone Canyon Rd., Dallas, TX 75230

APPEARING IN OPPOSITION: David Flack, 10831 Stone Canyon Rd. Dallas, TX

MOTION: Bartos

I move that the Board of Adjustment, in appeal No. BDA 178-037, on application of Monica Ofcharik, **grant** the request of this applicant to maintain an eight-foot high fence with panels having less than 50 percent open surface area located less than 5 feet from the front lot line as a special exception to the fence standards regulations contained in the Dallas Development Code as amended because our evaluation of 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.

SECONDED: Beikman

AYES: 5 – Torres, Beikman, Shouse, Sahuc, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-029(OA)

BUILDING OFFICIAL’S REPORT: Application of Mohammed M. Rahman for special exceptions to the fence standards and visual obstruction regulations at 9709 Chimney Hill Lane. This property is more fully described as Lots A-K, Block D/8418 and is zoned MF-1(A), which limits the height of a fence in the front yard to 4 feet, requires a fence

panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line, and requires a 20 foot visibility triangle at alleys and at driveway approaches. The applicant proposes to construct and/or maintain a 6 foot 4 inch high fence in a required front yard, which will require a 2 foot 4 inch special exception to the fence standards, 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, and to locate and/or maintain items in required visibility triangles, which will require a special exception to the visual obstruction regulations.

LOCATION: 9709 Chimney Hill Lane

APPLICANT: Mohammed M. Rahman

REQUESTS:

The following requests have been made on a site that is being developed with townhouses:

1. Requests for special exceptions to the fence standards regulations related to fence height of 2' 4" are made to construct and maintain a fence higher than 4' in height in the site's Chimney Hill Lane 15' front yard setback and the site's Ferris Creek Lane 15' front yard setback – a 6' 4" high solid brick fence with a 6' 4" high brick columns;
2. Requests for special exceptions to the fence standards regulations related to a fence panels with a surface area that is less than 50 percent open less than 5' from the front lot line are made to construct and maintain the aforementioned 6' 4" high solid brick fence with 6' 4" high brick columns along Chimney Hill Lane and Ferris Creek Lane located less than 5' from these front lot lines;
3. Requests for special exceptions to the visual obstruction regulations are made to construct and maintain the aforementioned solid 6' 4" high solid brick fence with 6' 4" high brick columns in two 20' visibility triangles at a driveway into the site on Ferris Creek Lane;
4. A request for special exception to the visual obstruction regulations is made to construct and maintain the aforementioned solid 6' 4" high solid brick fence with 6' 4" high brick columns in the 20' visibility triangle at where the alley meets Ferris Creek Lane.

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 (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.

STAFF RECOMMENDATION (visual obstruction special exceptions):

Denial:

Rationale:

- The Sustainable Development Department Senior Engineer recommends that these requests be denied commenting that “driveway sight distance and visibility obstructions should be aggressively managed for shared access (multiple lots). In addition, granting the exception would allow a driveway design that is wider than 30 feet, the maximum driveway width for high-density residential development. It would also restrict the ability to design an adequate curb radius”.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be denied because the applicant had not substantiated how the items proposed to be located in the visibility triangles do not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: MF-1(A)(SUP#724) (Multifamily district 1, SUP for a Community Center)
North: MF-1(A)(SUP#1102) (Multifamily district, SUP for a Handicapped Group Dwelling Units)
South: TH-2(A) (Townhouse district 2)
East: MF-1(A) (Multifamily district 1)
West: MF-1(A) (Multifamily district 1)

Land Use:

The subject site is being developed with townhomes. The area to the north is developed as a handicap group dwelling use; the area to the west is developed with apartment units; and the areas to the south and east are developed with townhomes.

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 (fence standards):

- The requests for special exceptions to the fence standards focus are twofold. Special exceptions to the fence standards regulations related to height of 2' 4" are made to construct and maintain a fence higher than 4' in height in the site's Chimney Hill Lane 15' front yard setback and the site's Ferris Creek Lane 15' front yard setback – a 6' 4" high solid brick fence with 6' 4" high brick columns. Special exceptions to the fence standard regulations related to a fence with panels with surface areas less than 50 percent open are made to construct and maintain the aforementioned 6' 4" high solid brick fence with 6' 4" high brick columns along Chimney Hill Lane and Ferris Creek Lane less than 5' from these front lot lines.
- The subject site is zoned MF-1(A)(SUP#724) which requires a 15' front yard setback.
- Section 51A-4.602(a)(4) of the Dallas Development Code states that in multifamily districts, a fence located in the required front yard may be built to a maximum height of six feet above grade if all conditions in the following subparagraphs are met:
 - No lot in the blockface may be zoned as a single family or duplex lot.
 - No gates for vehicular traffic may be located less than 20 feet from the back of the street curb.
 - No fence panel having less than 50 percent open surface area may be located less than five feet from the property line.
- Section 51A-4.602(a)(5) of the Dallas Development Code states that If a fence panel setback is required under Paragraph (4)(C), the entire setback area, except for driveways and sidewalks, must be located within 100 feet of a verifiable water supply and landscaped with living evergreen shrubs or vines recommended for local use by the park and recreation director. Initial plantings must be calculated to cover a minimum of 30 percent of the fence panel(s) within three years after planting. Shrubs or vines must be planted 24 inches on center over the entire length of the setback area unless a landscape architect recommends otherwise.
- Section 51A-4.602(a)(6) of the Dallas Development Code states that unless all of the conditions in Paragraphs (4) and (5) are met, a fence in a multifamily district may not exceed four feet above grade when located in the required front yard, except when the required front yard is governed by the side or rear yard regulations pursuant to Section 51A-4.401.
- Since the applicant's fence proposal is unable to meet all of the conditions required by Section 51A-4.602(a)(4) of the Dallas Development Code, the proposed fence may not exceed four feet above grade when located in the required front yard. Therefore, in order for the applicant to accomplish his proposal, the applicant requests the above special exceptions to the fence standards.
- The site is located at the northwest corner of Chimney Hill Lane and Ferris Creek Lane.
- The site has two front yard setbacks given that it fronts two streets as any corner property would that is not zoned a single family, duplex, or agricultural district.
- The applicant submitted site plan and a site plan/elevation representing the proposed fences in the front yard setbacks with notations indicating that the proposal reaches a maximum height of 6' 4".
- On April 3, 2018, the applicant submitted a revised site plan (attachment C) representing the revised location for the proposed fences in the front yard setbacks.

- The applicant has submitted a revised site plan/elevation of the proposal along Chimney Hill Lane and Ferris Creek Lane with fence panels having a surface area that is less than 50 percent open and located less than 5' from this front lot line – a 6' 4" high solid brick fence approximately 225' in length parallel to Chimney Hill Lane, and approximately 179' in length parallel to Ferris Creek Lane of the site in the front yard setbacks in length located on these front lot lines.
- The following additional information was gleaned from the submitted site plan:
 - Along Chimney Hill Lane: the proposal is represented as being approximately 225' in length parallel to the street and approximately 15' perpendicular to the street on the west side of the site in this required front yard; located approximately at the property line from the front property line or approximately 15' from the pavement line.
 - Along Ferris Creek Lane: the proposal is represented as being approximately 179' in length parallel to the street and approximately 15' perpendicular to the street on the west side of the site in this required front yard; located approximately on the front property line or approximately 10' from the pavement line.
- The Sustainable Development and Construction Department 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 Chimney Hill Lane located in a front yard setback. No fences were noted that appeared to be above 4' in height along Ferris Creek Lane. Each fence noted appears to be permitted by right.
- As of April 6, 2018, no letters had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height above 4' and to location and fence panels with surface areas that are less than 50 percent open will not adversely affect neighboring property. Granting these special exceptions to the fence standards related to height of up to 2' 4" and to location fence panels with surface areas that are less than 50 percent open in certain areas on the site with a condition imposed that the applicant complies with the revised site plan and elevation documents, would require the proposals exceeding 4' in height (solid 6' 4" high solid brick fence with 6' 4" high brick columns in the front yard setbacks and with solid brick fence panels on the front lot lines of Chimney Hill Lane and Ferris Creek Lane) to be constructed and maintained in the location as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

- The requests for special exceptions to the visual obstruction regulations focus on locating and maintaining portions of a solid 6' 4" high solid brick fence with 6' 4" high brick columns in two 20' visibility triangles at a driveway into the site on Ferris Creek Lane and a solid 6' 4" high solid brick fence with 6' 4" high brick columns in the 20' visibility triangle at where the alley meets Ferris Creek Lane.
- 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 applicant is requesting for special exceptions to the visual obstruction regulations to the required 20 foot visibility triangles at the driveway into the site on Ferris Creek Lane and at the required 20 foot visibility triangle where the ally meets Ferris Creek Lane.
- While the originally submitted site plan represented that the 6' 4" high solid brick fence with 6' 4" high brick columns complied with the visual obstruction regulations, this plan did not represent the existence of an ally.
- On April 3, 2018, the applicant submitted a revised site plan (attachment C) indicating portions of a 6' 4" high solid brick fence with 6' 4" high brick columns located in the 20' visibility triangle at where the alley meets Ferris Creek Lane. However, while the applicant includes a notation that the fence will encroach 6 feet into the visibility triangles on both sides of the driveway, the revised site plan does not represent any encroachment of the solid 6' 4" high solid brick fence with 6' 4" high brick columns in two 20' visibility triangles at a driveway into the site on Ferris Creek.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Recommends that this be denied" with the following comment:
 - "Driveway sight distance and visibility obstructions should be aggressively managed for shared access (multiple lots). In addition, granting the exception would allow a driveway design that is wider than 30 feet, the maximum driveway width for high-density residential development. It would also restrict the ability to design an adequate curb radius" (Attachment D).
- 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 a solid 6' 4" high solid brick fence with 6' 4" high brick columns located in two 20' visibility triangles at a driveway into the site on Ferris Creek Lane and at where the alley meets Ferris Creek Lane, do not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the submitted revised site plan and elevation would require the items in the visibility triangles to be limited to and maintained in the locations, height and materials as shown on these documents. (Note that while the applicant has made requests for special exceptions to visual obstruction regulations to locate and maintain items in the two 20' visibility triangles at the driveway into the property from Ferris Creek Lane, there is no representation of any item in these triangles on either the originally submitted or revised site plan).

Timeline:

November 9, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 12, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B

- February 20, 2018: The application was removed from the March 21st docket and postponed indefinitely until the application was deemed complete by city staff.
- March 14, 2017: 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 March 29th deadline to submit additional evidence for staff to factor into their analysis; and the April 7th 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.
- March 26, 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).
- April 3, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board
- April 3, 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 B).
- April 3, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments C).
- April 4, 2018: The Sustainable Development Department Assistant Director of Engineering has submitted a review comment sheet marked "Recommends that this be denied" with the following comment: "Driveway sight distance and visibility obstructions should be aggressively managed for shared access (multiple lots). In addition, granting the exception would allow a driveway design that is wider than 30 feet, the maximum driveway width for high-density residential development. It would also restrict the ability to design an adequate curb radius" (see Attachment D).

BOARD OF ADJUSTMENT ACTION APRIL 18, 2018

APPEARING IN FAVOR: Mohammed Rahman, 9709 Chimney Hill Ln., Dallas, TX

APPEARING IN OPPOSITION: Steve Seider, 12304 Ferris Creek Lane, Dallas, TX

MOTION#1: Bartos

I move that the Board of Adjustment in appeal No. BDA 178-029, hold this matter under advisement until 05/23/18.

SECONDED: None

MOTION FAILED

MOTION#2: Sahuc

I move that the Board of Adjustment, in Appeal No. BDA 178-029, on application of Mohammed Rahman, **deny** all three of the special exceptions requested by this applicant without prejudice, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Beikman

AYES: 5 – Torres, Beikman, Shouse, Sahuc, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-045(SL)

BUILDING OFFICIAL’S REPORT: Application of Virendra Seth for a variance to the front yard setback regulations at 5838 Monticello Avenue. This property is more fully described as Lot 22, Block 8/2153, and is zoned CD 11, which requires a front yard setback of 36 feet. The applicant proposes to construct and/or maintain a structure and provide a 28 foot 6 inch front yard setback, which will require a 7 foot 6 inch variance to the front yard setback regulations.

LOCATION: 5838 Monticello Avenue

APPLICANT: Virendra Seth

REQUEST:

A request for variance to the front yard setback regulations of 7’ 6” is made to maintain and to modify/maintain an existing single family home structure, a portion of which is located 28’ 6” from the front property line or 7’ 6” into the 36’ front yard setback. The existing structure in the front yard setback on the subject site is in part a nonconforming structure (steps and single family home structure constructed in the 1920’s), and in part an illegal structure (an attached porch structure built in 2016).

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not substantiated how the rectangular-shaped, flat, approximately 7,250 square foot subject site cannot be developed in a manner commensurate with the development upon other parcels of land with the same CD 11 zoning district. Other than the part of the existing structure in the CD 11 front yard setback that is assumed to have been built in the 1920's, features of the site have allowed it to be developed with an approximately 2,000 square foot single family home that had complied with front yard setbacks in the previous R-7.5(A) zoning, and as a nonconforming structure in the existing CD 11 zoning.
- Staff concluded that the applicant had not substantiated how if the Board were to grant the variance for an attached porch structure added to the nonconforming structure without a permit in 2016, it would not be to relieve a self-created or personal hardship, nor for financial reasons only.

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, south, east and west are developed with single family residential uses.

Zoning/BDA History:

- | | |
|--|---|
| 1. BDA178-014, Property at 5838 Monticello Avenue (the subject site) | On February 21, 2018, the Board of Adjustment Panel B denied the applicant's appeal of the decision of an administrative official. |
| 2. BDA178-015, Property at 5838 Monticello Avenue (the subject site) | On February 21, 2018, the Board of Adjustment Panel B denied a request for a variance to the front yard setback regulations of 7' 6" without prejudice. The case report stated the request was made to maintain and to modify/maintain an existing single family home structure, a portion of which is located 28' 6" from the front property line or 7' 6" into the 36' front yard setback whereby the existing structure on the subject site was in part a nonconforming structure (a step structure constructed in the 1920's), and in part a structure that was an illegal structure (a porch structure built in 2016). |

GENERAL FACTS/STAFF ANALYSIS:

- The request for a variance to the front yard setback regulations of 7' 6" focuses on: 1) maintaining a nonconforming structure (steps and single family home) constructed in the 1920's, and 2) modifying and maintaining an illegal attached porch structure added to the existing single family home in 2016, both of which are located 28' 6" from the front property line or 7' 6" into the front yard setback.
- The site is located in CD 11 which states that minimum front yard setback is the average of the front yard of the contributing structures on the block face, with the average front yard of contributing main structures block face listed in Exhibit B of the ordinance. (Exhibit B lists that the average setback of the blockface is 36'). Prior to the creation of CD 11 in 2004, the property had been zoned R-7.5(A).
- The submitted scaled site plan indicates the following in the 36' front yard setback: 1) a "new awning over existing built area (5' 6" x 10') located 28' 6" from the front property line, and 2) "existing building footprint" located 34' 1" from the front property line.
- According to DCAD records, the "main improvement" for property addressed at 5838 Monticello Avenue is structure built in 1926 with 2,018 square feet of living/total area, and that "additional improvements" is a 420 square foot attached garage and pool. Because records show that the main improvement/structure on this site was

built in the 1920's, it is assumed that the part of the existing structure on the site is a nonconforming structure.

- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The applicant has chosen to seek variance to the front yard setback regulations for both the nonconforming and illegal structures in the front yard setback.
- The site is flat, rectangular in shape (145' x 50') and 7,250 square feet in area. The site is zoned CD 11, however the site had been zoned R-7.5(A) where lots are typically 7,500 square feet in area prior to the creation of the CD in 2004.
- 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 CD 11 zoning classification.
 - If the Board were to grant the variance, it would not be 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 CD 11 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 nonconforming structure (steps and single family home) and an illegal structure (attached porch) that are located as close as 28' 6" from the front property line (or 7' 6" into this 36' front yard setback).
- Granting the front yard variance request will not provide any relief to architectural requirements of CD 11.

Timeline:

February 26, 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.

March 13, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case".

March 13, 2018: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 28th deadline to submit additional evidence for staff to factor into their analysis; and April 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

March 27, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

April 3, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION APRIL 18, 2018

APPEARING IN FAVOR: Devika Seth, 1305 Normandy Ct., Southlake, TX
Devik Seth, 5838 Monticello Ln., Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION#1: Bartos

I move that the Board of Adjustment, in Appeal No. BDA 178-045, on application of V.C. Seth, **GRANT** the seven-foot six-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows

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

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

- Compliance with the submitted site plan is required.

SECONDED: Shouse

AYES: 3 – Torres Shouse ,Bartos

NAYS: 2 - Beikman ,Sahuc

MOTION FAILED: 3 – 2

MOTION#2: Bartos

I move that the Board of Adjustment, in Appeal No. BDA 178-045, hold this matter under advisement until May 23, 2018.

SECONDED: Torres

AYES: 4 – Torres, Shouse, Sahuc, Bartos

NAYS: 1 - Beikman

MOTION PASSED: 4 – 1

MOTION: Shouse

I move to adjourn this meeting.

SECONDED: Beikman

AYES: 5 – Torres, Beikman, Shouse, Sahuc, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

2:54 P.M. Board Meeting adjourned for **April 18, 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.