

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, September 17, 2018**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member Matt Shouse, regular member, Lorlee Bartos, Alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member Matt Shouse, regular member, Lorlee Bartos, Alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, Donna Moorman, Chief Planner, Elaine Hill, Board Secretary

STAFF PRESENT AT HEARING: Kris Sweckard, Director, Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, David Cossum, Development Services Administrator, Elaine Hill, Board Secretary

11:15 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's September 17, 2018 docket.

1:19 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent.

Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, August 20, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: September 17, 2018

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA178-096(OA)

BUILDING OFFICIAL'S REPORT: Application of Robert Kenneth Patterson, represented by Kenneth Goggin, for a special exception to the single family use regulations at 1542 Stemmons Avenue. This property is more fully described as Lot 4 & 5 & Pt of 6 & 7, Block A/3778, and is zoned R-7.5(A), which limits the number of dwelling units to one. The applicant proposes to construct and/or maintain an additional dwelling unit, which will require a special exception to the single family use regulations.

LOCATION: 1542 Stemmons Avenue

APPLICANT: Robert Kenneth Patterson
Represented by Kenneth Goggin

REQUEST:

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

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.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 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 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 single-family use regulations focuses on constructing and maintaining a two-story additional “dwelling unit” structure on a site developed with a one-story main single family home/dwelling unit structure.
- The site is zoned R-7.5(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 use as a rental accommodations; 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 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 proposed additional dwelling unit denoted as “new structure”.
- The submitted floor plan of what appears to be the “new construction” denoted on the 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 “new structure”, specifically its collection of rooms/features shown on the floor plan.
- The application states a request has been made for: “family use only”.
- According to DCAD records, the “main improvement” for property addressed at 1542 Stemmons Avenue is a structure built in 1955 with 3,497 square feet of total/living area with the following “additional improvements”: a 644 square-foot attached garage, a 324 square-foot cabana, and a pool.
- According to the submitted site plan the main structure contains 3,497 square feet of total/living area and the additional dwelling unit structure contains 1156 square feet.
- 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 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 site plan as “living quarters” as an additional “dwelling unit”.

Timeline:

June 4, 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.

August 14, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 16, 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 29th deadline to submit additional evidence for staff to factor into their analysis; and the September 7th 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.”

September 4, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Authorized Hearing/Development Code Amendment Chief Planner, 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: September 17, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move that the Board of Adjustment **grant** the following application **BDA 178-096** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code, as amended, and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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: Shouse

AYES: 5 – Richardson, Gambow, Shouse, Agnich, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-098(OA)

BUILDING OFFICIAL'S REPORT: Application of Nicolas Villalba for a special exception to the single family use regulations at 4802 Iberia Avenue. This property is more fully described as Lot 1A, Block 15/8570, and is zoned MU-1, which limits the number of dwelling units for a single family use in this zoning district to one. The applicant proposes to construct and/or maintain an additional dwelling unit for a single family use, which will require a special exception to the single family use regulations.

LOCATION: 4802 Iberia Avenue

APPLICANT: Nicolas Villalba

REQUEST:

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

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.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: MU-1 Mixed Use District
North: IM Industrial Manufacturing
South: IR Industrial Research District
East: IR Industrial Research District; SUP No. 1241
West: IR Industrial Research District

Land Use:

The subject site is being developed with a single family home. The area to the east is developed with single-family/duplex uses; and the areas to the north, south, west, are developed with industrial 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 single family use regulations focuses on constructing and maintaining a one-story additional “dwelling unit” structure on a site that is being developed with a two-story main single family home/dwelling unit structure.
- The site is zoned MU-1 where the Dallas Development Code permits moderate density retail, office, and/or multifamily residential uses in combination on single or contiguous building sites per lot.
- The residential use regulations of the Dallas Development Code defines a duplex as two dwelling units located on a lot and limits the duplex to only one main building per lot.
- The residential use regulations of the Dallas Development Code defines multifamily as three or more dwelling units located on a lot.
- The submitted site plan for this application denotes the locations of two building footprints for two separate dwelling units. Since the proposal does not meet the residential use regulations of the Dallas Development Code for a duplex or/and

multifamily uses, Building Inspection has determined this proposal should be considered as a single family structure with an additional dwelling unit.

- The Dallas Development Code states that the board of adjustment may grant a special exception to authorize an additional dwelling unit in any district when, in the opinion of the board, the special exception will not: 1) be used as a rental accommodation; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines 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 site plan denotes the locations of two building footprints, the larger of the two with what appears to be the main dwelling structure and the proposed additional dwelling unit denoted as “guest house”.
- The submitted floor plan of what appears to be the “guest house” denoted on the 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 “guest house”, specifically its collection of rooms/features shown on the floor plan.
- The application states a request has been made to: “accommodate family elders and accommodate visiting relatives”.
- DCAD records indicate “no main improvement” for the property at 4802 Iberia Avenue.
- According to the submitted site plan the main structure contains 3,247 square feet of total/living area and the additional dwelling unit structure contains 1,260 square feet.
- On August 24, 2018, the applicant provided two letters from his neighbors supporting the proposed additional dwelling unit, located at 4802 Iberia Avenue, to the Board of Adjustment Senior Planner (see Attachment A).
- 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 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 site plan as “guest house” as an additional “dwelling unit”.

Timeline:

June 12, 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.

August 14, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 16, 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 29th deadline to submit additional evidence for staff to factor into their analysis; and the September 7th 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.”

August 24, 2018: The applicant’s representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

September 4, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Authorized Hearing/Development Code Amendment Chief Planner, 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: SEPTEMBER 17, 2018

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Bartos**

I move that the Board of Adjustment **grant** the following application **BDA 178-098** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code, as amended, and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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: **Shouse**

AYES: 5 – Bartos, Richardson, Agnich, Gambow, Shouse

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-102(OA)

BUILDING OFFICIAL’S REPORT: Application of Paul E. Turner, represented by Paula Lane, for a special exception to the single family use regulations at 8533 Stults Road. This property is more fully described as Lot 3, Block 7506, and is zoned R-10(A), which limits the number of dwelling units to one. The applicant proposes to construct and/or maintain an additional dwelling unit, which will require a special exception to the single family use regulations.

LOCATION: 8533 Stults Road

APPLICANT: Paul E. Turner,
Represented by Paula Lane

REQUEST:

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

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.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)
North: R-10(A) (Single family district 10,000 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: PD 456 (Planned Development)
West: R-10(A) (Single family district 10,000 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 single family use regulations focuses on constructing and maintaining a one-story additional “dwelling unit” structure on a site developed with a one-story main single family home/dwelling unit structure.
- The site is zoned R-10(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 used as rental accommodations; 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 site plan denotes the locations of two building footprints, the smaller of the two with what appears to be the existing single family main structure and the proposed additional dwelling unit denoted as “one-story residence”.
- The submitted floor plan of what appears to be the “one-story residence” denoted on the 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 bigger structure on the site – the “one-story residence”, specifically its collection of rooms/features shown on the floor plan.
- The application states a request has been made for: “our parents are elderly (ages 81 and 75) and have asked us to build next to them to help them as they grow older. We are trying to meet their needs”.
- According to DCAD records, the “main improvement” for property addressed at 8533 Stults Road is a structure built in 2004 with 2,480 square feet of total/living area with the following “additional improvements”: a 529 square foot attached garage, a 336 square feet attached carport, a 100 storage building, and a 24 square feet storage space.
- According to the submitted site plan the main structure contains 2,480 square feet of total/living area and the additional dwelling unit structure contains 3015 square feet.
- On August 24, 2018, the applicant provided a letter and an email from her neighbors supporting the proposed additional dwelling unit, located at 8533 Stults, to the Board of Adjustment Senior Planner (see Attachment A).

- 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 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 site plan as “living quarters” as an additional “dwelling unit”.

Timeline:

June 25, 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.

August 14, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 16, 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 29th deadline to submit additional evidence for staff to factor into their analysis; and the September 7th 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.”

August 24, 2018: The applicant’s representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

September 4, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the

Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Authorized Hearing/Development Code Amendment Chief Planner, 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: September 17, 2018

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Bartos**

I move that the Board of Adjustment **grant** the following application **BDA 178-102** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code, as amended, and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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: **Shouse**

AYES: 5 – Bartos, Richardson, Agnich, Gambow, Shouse

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-089(OA)

BUILDING OFFICIAL’S REPORT: Application of David H. Goettsche for a variance to the front yard setback regulations at 1 Bella Porta Place. This property is more fully described as Lot 1, Block B/8176, and is zoned R-1/2ac(A), which requires a front yard setback of 40 feet. The applicant proposes to construct and/or maintain a structure and provide a 10-foot front yard setback, which will require a 30 foot variance to the front yard setback regulations.

LOCATION: 1 Bella Porta Place

APPLICANT: David H. Goettsche

REQUEST:

A request for a variance to the front yard setback regulations of 30' is made to construct and maintain a "pool" and "cabana" structures on an undeveloped lot, which would be located as close as 10' from the front property line or as much as 30' into the 40' front yard setback.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- While staff recognized that applicant had shown by submitting a document indicating among other things that the total living area/additional improvements on the subject site at approximately 7,700 square feet is commensurate to that what is found on 10 other properties in the same R-1/2ac (A) zoning district with approximately 7,880 square feet, staff concluded that the applicant had not substantiated how if the Board were to grant this request it would not be to relieve a self-created or personal hardship since the lot even though it is less than ½ acre in area was a result of a Community Unit Development (CUD) created on the site and surrounding properties in 2007.

BACKGROUND INFORMATION:

Zoning:

Site: R-1/2ac (A) (Single family district 1/2 acre)
North: R-1/2ac (A) (Single family district 1/2 acre)
South: R-1/2ac (A) (Single family district 1/2 acre)
East: R-1/2ac (A) (Single family district 1/2 acre)
West: PD 558 (Planned Development)

Land Use:

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

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 request for variance to the front yard setback regulations of 30' focuses on constructing and maintaining a "pool" and "cabana" structures on a property developed with a single family home, which, according to the submitted revised site plan, would be located as close as 10' from the front property line or as much as 30' into the 40' front yard setback.
- The subject site is zoned R-1/2ac (A) which requires a 40' front yard setback.
- The submitted plan represents that a "pool" and cabana structures are proposed to be located as close as 10' from the site's front property line (or 30' into the 40' front yard setback).
- The subject site is flat, rectangular in shape, and according to the application, is 0.386 acres (or 16,819 square feet) in area. While most lots in this R-1/2ac (A) zoning have a typical lot size of 21,780 square feet, this 16,819 square feet lot size is less than what is typical in this zoning district because of a Community Unit Development (CUD) created in 2007 part of which was due to the site and surrounding area being located in the 100-year flood plain.
- DCAD records indicate "no main improvements" for the property at 1 Bella Porta Place.
- The following additional information was gleaned from the submitted site plan and elevation:
 - The pool structure is represented as being approximately 37' in length and 17' in width or approximately 630 square feet in area.
 - The pool structure is represented as being located approximately 10' from the property line.
 - The cabana structure is represented as being approximately 14' in length by 17' in width or approximately 240 square feet in area.
 - The cabana structure is represented as being located approximately 10' from the property line.

- The cabana structure reaches approximately a maximum height of 12' 2"
- The subject site has a 7' 5" screening wall & traffic barrier easement along the north frontage that prevents access from Spring Valley Road.
- The applicant has submitted a document indicating that the total "maximum AC space" of the proposed home on the subject site is approximately 7,660 square feet which is smaller than that of 10 other homes he listed of properties in R-1/2ac (A) zoning. (The average square footage of 10 other properties listed in the applicant's document is approximately 7,880 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 to front yard setback regulations 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-1/2ac (A) zoning classification.
 - The variance to front yard setback regulations 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-1/2ac(A) zoning classification.
- If the Board were to grant this 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 are pool and cabana structures to be located 10' from the site's front property line or 30' into the required 40' front yard setback.
- Granting this request for a variance to the front yard setback regulations would provide no relief to the Flood Plain regulations on the subject site.

Timeline:

May 8, 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 C.

July 11, 2018: The Construction Department Board of Adjustment 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 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 10th 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.

August 2, 2018: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner 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 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.

August 20, 2018: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner advising he was sick and requesting the Board of Adjustment to delay action on this application until the next public hearing (see Attachment B).

August 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 September 17, 2018.

August 21, 2018: The applicant submitted additional documentation on this application to Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment C).

August 27, 2018: The Construction Department Board of Adjustment Senior Planner wrote the applicant a letter of the board's action; the August 29th deadline to submit additional evidence for staff to factor into their analysis; and the September 7th deadline to submit additional evidence to be incorporated into the Board's docket materials.

September 4, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Authorized Hearing/Development Code Amendment Chief Planner, 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 20, 2018

APPEARING IN FAVOR: Rob Baldwin, 3604 Elm, #B, Dallas, TX
Sami N. Ebrahim, 5 Bella Porta Place, Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: Bartos

I move that the Board of Adjustment, in Appeal No. BDA 178-089, on application of David Goettsche, **grant** the 30-foot 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.

SECOND: Agnich

AYES: 5 – Bartos, Richardson, Agnich, Gambow, Shouse

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-100(OA)

BUILDING OFFICIAL'S REPORT: Application of Tag Gilkeson for a variance to the side yard setback regulations at 4516 Forest Bend Road. This property is more fully described as Lot 8, Block 5/8396, and is zoned R-10(A), which requires a side yard

setback of 6 feet. The applicant proposes to construct and/or maintain a structure and provide a 0 foot side yard setback, which will require a 6 foot variance to the side yard setback regulations.

LOCATION: 4516 Forest Bend Road

APPLICANT: Tag Gilkeson

REQUESTS:

A request for a variance to the side yard setback regulations of 6' is made to convert an existing attached carport to an attached garage 0' from the side property line (the west side property line) or 6' into the 6' side yard setback on a site that is developed with a single family home.

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 (front yard, side yard, and floor area variances):

Denial

Rationale:

- Staff concluded that the applicant had not substantiated how 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 it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-10 (A) zoning district.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)
North: R-10(A) (Single family district 10,000 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: R-10(A) (Single family district 10,000 square feet)
West: R-10(A) (Single family district 10,000 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 (side yard variance):

- This request focuses on converting an existing attached carport to an attached garage 0' from the side property line (the west side property line) or 6' into the 6' side yard setback on a site that is developed with a single family home.
- Structures on lots zoned R-10(A) are required to provide a minimum side yard setback of 6'.
- A site plan has been submitted denoting a portion of a converted attached carport into an attached garage structure located on the western side property line or 6' into this 6' side yard setback.
- It appears from the submitted site plan that approximately 15 percent of the proposed 800 square foot converted attached garage structure footprint is located in the site's western 6' side yard setback.
- DCAD records indicate the following improvements for property located at 4516 Forest Bend Road: "main improvement: a structure with 4,116 square feet of living area built in 1967" and "additional improvements; a 498 square foot attached garage, a 484 square foot attached carport, and a pool".
- The subject site is rectangular in shape, flat, and according to the application, is 0.350 acres (or approximately 15,250 square feet) in area. The site is zoned R-10(A) where lots are typically 10,000 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side 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-10(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-10(A) zoning classification.
- If the Board were to grant this side yard setback variance request and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document which is a structure 0' from the side property line (the west side property line) or 6' into the 6' side yard setback.

Timeline:

April 27, 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.

August 14, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

August 16, 2018: The Sustainable Development and Construction Department 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 29th deadline to submit additional evidence for staff to factor into their analysis; and the September 7th 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."

September 4, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Authorized Hearing/Development Code Amendment Chief Planner, 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: September 17, 2018

APPEARING IN FAVOR: Tag Gilkeson, 1601 Blackstone Dr., Carrollton, TX
Virginia Reddy, 4516 Forest Bend, Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION #1: Bartos

I move that the Board of Adjustment, in Appeal No. BDA 178-100, on application of Tag Gilkeson, **grant** the six-foot variance to the side 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.

SECOND: Agnich

AYES: 3 - Bartos, Agnich, Gambow

NAYS: 2 - Richardson, Shouse,

MOTION FAILED: 3 – 2

MOTION #2: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 178-100, on application of Tag Gilkeson, **grant** the six-foot variance to the side 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.

SECOND: Agnich

AYES: 4 - Bartos, Agnich, Gambow, Shouse

NAYS: 1 – Richardson

MOTION PASSED: 4 - 1

NOTE: This motion failed originally, then was reconsidered and passed.

2:26 P. M. - Board Meeting adjourned for **September 17, 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.