

BOARD OF ADJUSTMENT

Panel B Minutes

November 15, 2023



6ES Briefing Room
24974849659@dallascityhall.webex.com

Cheri Gambow, Vice-Chair

PRESENT: [5]

Cheri Gambow, VC	
Sarah Lamb	
Philip Sahuc	
Michael Karnowski	
Derrick Nutall - Virtual	

ABSENT: [0]

Joe Cannon	

Vice-Chair Gambow called the briefing to order at **10:31 A.M.** with a quorum of the Board of Adjustment present.

Vice-Chair Gambow called the hearing to order at **1:08 P.M.** with a quorum of the Board of Adjustment present.

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

PUBLIC SPEAKERS

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

We had no speaker for public testimony during this hearing.

MISCELLANEOUS ITEMS

Approval of the Board of Adjustment Special Call Meeting Minutes.

Motion was made to approve the Board of Adjustment Special Call Meeting Minutes.

Maker:	Sarah Lamb				
Second:	Derrick Nutall				
Results:	5-0 unanimously				Moved to approve
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Phil Sahuc, Derrick Nutall, Sarah Lamb
		Against:	-	0	

Approval of the Board of Adjustment Panel B, October 18th, 2023 meeting minutes.

Motion was made to approve Panel B, October 18th, 2023 public hearing minutes.

Maker:	Sarah Lamb				
Second:	Michael Karnowski				
Results:	5-0 unanimously				Moved to approve
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Phil Sahuc, Derrick Nutall, Sarah Lamb
		Against:	-	0	

UNCONTESTED ITEMS

1. 2851 W. Jefferson Boulevard

***This case was moved to Individual Items**

BDA223-092(KMH)

BUILDING OFFICIAL'S REPORT: Application of Maurice Wilson represented by Krystina Paige for (1) a variance to the front yard setback regulations, and for (2) a variance to the building height regulations at 2851 W. Jefferson BLVD. This property is more fully described as Block A/4602, Lot 7 and is zoned R-7.5(A), which requires a front yard setback of 25 feet and limits the maximum building height to 30-feet. The applicant proposes to construct a single-family residential structure and provide a 15-foot front yard setback, which will require (1) a 10-foot variance to the front yard setback regulations, and to construct a single-family residential structure with a building height of 33-feet 6-inches, which will require a (2) 3-foot and 6-inch variance to the maximum building height regulations.

LOCATION: 2851 W. Jefferson Blvd.

APPLICANT: Maurice Wilson

Represented by: Krystina Paige

REQUEST:

- (1) A request for a variance to the front-yard setback regulations.
- (2) A request for a variance to the building height regulations.

STANDARD FOR A VARIANCE:

Section 51A-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:

- **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.
- **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
- **not granted to relieve a self-created or personal hardship**, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

State Law/HB 1475 effective 9-1-21

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

STAFF RECOMMENDATION:

Variance to front yard setback:

Approval

Rationale: Based upon evidence presented and provided by the applicant, staff concluded that the site is:

- A. Not contrary to the public interest as no letters of opposition were received.

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- B. Restrictive in area due to the floodplain on the property which limits the buildable area; therefore, the property cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- C. Not a self-created or personal hardship.

Variance to building height:

Approval

Rationale: Based upon evidence presented and provided by the applicant, staff concluded that the site is:

- A. Not contrary to the public interest as no letters of opposition were received.
- B. Restrictive in area due to the floodplain on the property which limits the buildable area; therefore, the property cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- C. Not a self-created or personal hardship.

BDA HISTORY:

No BDA history within the last 5 years.

Zoning:

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

Land Use:

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

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the front yard setback regulations of 10-feet is made to construct and/or maintain a single-family residential structure.
- Additionally, a request for a variance to the building height regulations of 3-feet and 6-inches is also made to construct and/or maintain a single-family residential structure.
- The applicant proposes to construct and maintain a single-family residential structure and provide a front yard setback of 15-feet; and construct a single-family residential home exceeding the 30-foot maximum building height regulations.
- The Dallas Development Code requires a 25-foot setback for required front yards in the R-7.5(A) zoning district and states that the maximum building height for this district is 30-feet.
- It is imperative to note that the subject property lies within a flood zone which limits the buildable area; therefore, the property cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.

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

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- That granting the variance to the front yard setback and to the building height 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 a specific parcel of land that differs from other parcels of land by being of such 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
- 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 a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

The board may also consider **Dallas Development Code §51A-3.102(d)(10)(b) formerly known as HB 1475** as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code.
 - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur.
 - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement.
 - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (e) the municipality considers the structure to be a nonconforming structure.
- Granting the proposed 10-foot variance to the front yard setback as well as granting the proposed 3-foot 6-inch variance to the maximum building height with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.

Timeline:

- September 7, 2023: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 2, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **B**.
- October 4, 2023: 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 October 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and November 3, 2023, deadline to submit additional evidence to be incorporated into the board’s docket materials.

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

November 1, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

Speakers:

For: Kristina Paige, 2851 W. Jefferson Blvd, Dallas TX

Against: No Speakers

Motion # 1

I move that the Board of Adjustment, in Appeal No. BDA 223-092, on application of Maurice Wilson, **GRANT** the 10-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 most recent version of all submitted plans are required.

Maker:	Sarah Lamb				
Second:	Phil Sahuc				
Results:	5-0				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Phil Sahuc, Derrick Nutall, Sarah Lamb
		Against:	-	0	

Motion # 2

I move that the Board of Adjustment, in Appeal No. BDA 223-092, on application of Maurice Wilson, **GRANT** the 3-foot 6-inch variance to the building height 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 most recent version of all submitted plans are required.

Maker:	Sarah Lamb				
Second:	Michael Karnowski				
Results:	5-0				Motion to grant
		Ayes:	-	5	Cheri Gambow, Michael Karnowski, Phil Sahuc, Derrick Nutall, Sarah Lamb
		Against:	-	0	

2. 4200 Duncanville Road
BDA223-093(DB)

BUILDING OFFICIAL’S REPORT: Application of Jennifer Hiromoto for (1) a special exception to the landscaping regulations at 4200 Duncanville Rd. This property is more fully described as Block A/8032 Lot 1, and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct and/or maintain a nonresidential structure and provide an alternate landscape plan, which will require (1) a special exception to the landscape regulations.

LOCATION: 4200 Duncanville Rd.

APPLICANT: Jennifer Hiromoto

REQUEST:

(3) A special exception to the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPING AND TREE MITIGATION:

Section 51A-10.110 of the Dallas Development Code states the board may grant a special exception to the requirements of this article upon making a special finding from the evidence presented that strict compliance with the requirements of this article will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. In determining whether to grant a special exception under Subsection (a), the board shall consider the following factors:

- The extent to which there is **residential adjacency**.
- The **topography** of the site.
- The extent to which landscaping exists for which no credit is given under this article.
- The extent to which **other existing or proposed amenities will compensate for the reduction** of landscaping. (Ord. Nos. 22053; 25155)

STAFF RECOMMENDATION:

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

BDA HISTORY:

No BDA History found within the last 5 years.

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: IR (Industrial Research)
West: IR (Industrial Research)

Land Use: The subject site is currently undeveloped; intended to be used as an Industrial (Inside) use. The surrounding area mainly consists of large manufacturing and warehousing developments. Equipment rental, gas station, and vacant land are the land uses in this immediate area.

GENERAL FACTS/STAFF ANALYSIS:

- A request for a special exception to the landscape regulations
- As gleaned from the submitted site plan, the applicant is proposing to construct and/or maintain an industrial manufacturing business resulting in the need for a landscape special exception.
- Granting the special exception to the landscape and tree mitigation regulations with a condition that the applicant complies with the submitted site and landscape plan, would require the proposal to be constructed as shown on the submitted documents.

Timeline:

September 6, 2023: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 2, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **B**.

October 4, 2023: 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 October 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and November 3, 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.

October 30, 2023: The Development Services Chief Arborist reviewed the request, and all submitted documents and is in support due to the site being a restricted space for planting and feels the applicant has provided justification regarding the reductions of

plant materials on the site. He supports this alternative landscape plan (dated 10/23/2023) with conditions; comments will be provided during the briefing.

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November 1, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

Speakers:

For: Jennifer Hiromoto, 10233 E. NW Hwy # 38586, Dallas TX
(Did not speak)

Against: No Speakers

Motion

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

BDA 223-093 — Application of Jennifer Hiromoto, for a special exception to the landscape regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with the most recent version of all submitted plans are required.

Maker:	Sarah Lamb				
Second:	Phil Sahuc				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Sarah Lamb, Michael Karnowski, Phil Sahuc, Derrick Nutall
		Against:	-	0	

3. 5540 N. Forty Place

***This Case was moved to Individual Items / Moved last**

BDA223-094(DB)

BUILDING OFFICIAL’S REPORT: Application of Itamar David to (1) provide an additional electrical meter at 5540 North Forty Pl. This property is more fully described as Block 8732, Tract 3.29 acre and is zoned R-1/2ac(A), which requires that a single-family dwelling use in a single family district may be supplied by not more than one electrical utility service, and metered by not more than one electrical meter. The applicant proposes to construct and/or maintain a single-family dwelling in a single-family district and have more than one electrical utility service, or more than one electrical meter, which will require (1) a special exception to the single-family zoning use regulations

LOCATION: 5540 N Forty Place

APPLICANT: DAVID, ITAMAR

REQUESTS:

A special exception to the single-family use regulations is requested in conjunction with installing and maintaining an additional electrical utility service and electrical meter on a site that is currently developed with a single-family use.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE MORE THAN ONE ELECTRICAL UTILITY SERVICE OR MORE THAN ONE ELECTRICAL METER:

Section 51A-4.112 of the Dallas Development Code states the board may grant a special exception to authorize more than one electrical utility service or more than one electrical meter for a single-family use on a lot in a single-family zoning, duplex, or townhouse district when, in the opinion of the board, the special exception will not:

1. be **contrary to the public interest**;
2. **adversely affect neighboring properties**; and
3. be used **to conduct a use not permitted** in the zoning district.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize more than one electrical utility service or more than one electrical meter for a single-family use on a lot in a single-family zoning district since the basis for this type of appeal is when in the opinion of the board, the standards described above are met.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-1/2 ac(A) (single-family)
<u>North:</u>	R-1/2 ac(A) (single-family)
<u>West:</u>	R-1/2 ac(A) (single-family)
<u>South:</u>	R-1/2 ac(A) (single-family)
<u>East:</u>	R-1ac (A) (single-family)

Land Use:

The subject site and all surrounding areas to the north, south, and west are developed with single-family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on installing and maintaining a second electrical utility service/electrical meter on a site currently being developed with a single family home.

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- According to the application, the applicant requires a three-phase power to the pumps to operate a upper pool with spa and a lower river design located at the rear of the property. The applicant advised that he requires a second electric meter to provide a three-phase power.
- The site is zoned R-1/2 ac(A) (single-family) where the Dallas Development Code permits one dwelling unit per lot.
- The Dallas Development Code states that in a single family, duplex, or townhouse district, a lot for single family use may be supplied by not more than one electrical service, and metered by not more than one electrical meter; and that the board of adjustment may grant a special exception to authorize more than one electrical utility service or more than one electrical meter for single family use on a lot in a single family zoning district when in the opinion of the board, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties, and 3) not be used to conduct a use not permitted in the zoning district
- The applicant has submitted a site plan that indicate the proposed location of the second electrical meter on the subject site as well as the existing utility meter.
- As of November 02, 2023, no letters have been submitted in support of nor in opposition of the request.
- The applicant has the burden of proof in establishing that the additional electrical meter to be installed and/or maintained on the site will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties, and 3) not be used to conduct a use not permitted in the zoning
- If the board were to approve this request to install and maintain a second electrical utility service/electrical meter, this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing a second electrical utility service/electrical meter on the site (i.e., development on the site must meet all required code requirements).

Timeline:

- September 6, 2023: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 2, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.
- September 1, 2023: 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 October 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and November 3, 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.

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November 1, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorneys to the Board, and the Senior Planners.

Speakers:

For: No Speakers

Against: No Speakers

Motion # 1

I move that the Board of Adjustment, in Appeal No. 223-094, on application of Itamar David, **DENY** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would be contrary to the public interest; (AND/OR) would adversely affect neighboring property; (AND/OR) the additional meter would be used to conduct a use not permitted in the district where the building site is located.

Maker:	Sarah Lamb				
Second:	Derrick Nutall				
Results:	1-4				Motion fails to deny
		Ayes:	-	1	Sarah Lamb
		Against:	-	4	Cheri Gambow, Phil Sahuc, Michael Karnowski, Derrick Nutall

Motion # 2

I move that the Board of Adjustment in Appeal No. BDA 223-094, **HOLD** this matter under advisement until **December 13th, 2023**.

Maker:	Michael Karnowski				
Second:	Cheri Gambow				
Results:	4-1				Motion to hold
		Ayes:	-	4	Cheri Gambow, Phil Sahuc, Michael Karnowski, Derrick Nutall
		Against:	-	1	Sarah Lamb

4. 4211 Irving Boulevard

***This Case was moved to Individual Items**

BDA223-099(DB)

BUILDING OFFICIAL'S REPORT: Application of Ryan Smieguel for (1) a special exception to the landscaping regulations at 4211 Irving Blvd. This property is more fully described as Block B/7701,

Lot 1 and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct and/or maintain a nonresidential structure and provide an alternate landscape plan, which will require (1) a special exception to the landscape regulations.

LOCATION: 4211 Irving Blvd.

APPLICANT: Ryan Smiegiel

REQUEST:

(4) A special exception to the landscape regulations.

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

Section 51A-10.110 of the Dallas Development Code states that the board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

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

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

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

STAFF RECOMMENDATION:

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

BDA HISTORY:

No BDA History found within the last 5 years.

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: IM (Industrial Manufacturing)
West: IR (Industrial Research)

Land Use: The subject site is currently developed with a Freight Terminal use. The surrounding properties are developed with Commercial and business service and Industrial uses.

GENERAL FACTS/STAFF ANALYSIS:

- A request for a special exception to the landscape regulations
- As gleaned from the submitted site plan, the applicant is proposing to construct and/or maintain a Freight Terminal business resulting in the need for a landscape special exception.
- Granting the special exception to the landscape and tree mitigation regulations with a condition that the applicant complies with the submitted site and landscape plan, would require the proposal to be constructed as shown on the submitted documents.

Timeline:

September 13, 2023: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 2, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **B**.

October 4, 2023: 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 October 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and November 3, 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 13, 2023: The Development Services Chief Arborist reviewed the request, and all submitted documents and is in support with the alternate landscape plan. He acknowledges the existing use of the property and utility restrictions prohibit planting of a street buffer zone to code requirements; Additional comments and conditions will be provided during the hearing.

November 1, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

Speakers:

For: Philip Graham, 2201 E. Lamar Blvd., Arlington TX 76006
(Did not speak)

Against: No Speakers

Motion

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 are consistent with the general purpose and intent of the Code, as applicable to wit:

BDA 223-099 — Application of Ryan Smiegel, for a special exception to the landscape regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with the most recent version of all submitted plans are required.

Maker:	Sarah Lamb				
Second:	Phil Sahuc				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Sarah Lamb, Michael Karnowski, Phil Sahuc, Derrick Nutall
		Against:	-	0	

5. 1057 Kessler Parkway

***This Case was moved to Individual Items**

BDA223-100(DB)

BUILDING OFFICIAL'S REPORT: Application of James Thrower represented by Peter Kavanagh with Zone Systems Inc., for (1) a variance to the front yard setback regulations at 1057 Kessler Pkwy. This property is more fully described as Block 1/4634, Lot 11, 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 single-family residential structure and provide a 15-foot six-inch front yard setback, which will require a (1) 9-foot 6-inch variance to the front yard setback regulations.

LOCATION: 1057 Kessler Pkwy

APPLICANT: James Thrower

Represented by: Zone Systems Inc.

REQUEST:

(5) A request for a variance to the front yard setback regulations.

STANDARD FOR A VARIANCE:

Section 51A-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:

- **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.

- **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
- **not granted to relieve a self-created or personal hardship**, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

State Law/HB 1475 effective 9-1-21

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

STAFF RECOMMENDATION:

Approval

Rationale: Based upon evidence presented and provided by the applicant, staff concluded that the site is:

- D. Not contrary to the public interest as no letters of opposition were received.
- E. Restrictive in area due to the floodplain which limits the buildable area of the lot; therefore, the property cannot be developed in a manner commensurate with development upon other parcels of land in the same zoning.
- F. Not a self-created or personal hardship.

BDA HISTORY:

No BDA history was found within the last 5 years.

Zoning:

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

Land Use:

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

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the front yard setback regulations of 9-feet and 6-inches is made to construct and/or maintain a single-family residential structure.
- The subject site is surrounded by single family homes.
- The Dallas Development Code requires a 25-foot front yard setback for the R-7.5 (A) zoning district.
- Per the submitted site plan, the applicant proposes to construct and/or maintain a single-family residential home providing a 15-foot 6-inch front yard setback.

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

- That granting the variance to the front yard setback 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 a specific parcel of land that differs from other parcels of land by being of such 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
- 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 a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

Timeline:

September 14, 2023: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 2, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **B**.

October 4, 2023: 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 October 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and November 3, 2023, deadline to submit additional evidence to be incorporated into the board's docket materials.
- the criteria/standard that the board will use in their decision to approve or deny the request; and

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

November 1, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the November public hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner the Assistant City Attorney to the Board, the Senior Planner and Code Compliance staff.

Speakers:

For: Peter Kavanaugh, 1620 Handley drive Ste A, Dallas TX 75208
Bruce Bernbaum, 4528 N. Central Expy # 220, Dallas TX 75205 (Did not Speak)

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-100, on application of James Thrower, **GRANT** the 9-foot 6-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 most recent version of all submitted plans are required.

Maker:	Sarah Lamb				
Second:	Derrick Nutall				
Results:	5-0 Unanimously				Motion to grant
		Ayes:	-	5	Cheri Gambow, Sarah Lamb, Michael Karnowski, Derrick Nutall, Phil Sahuc
		Against:	-	0	

HOLDOVER

6. 5505 Chatham Hill Road
BDA223-074 (KMH)

BUILDING OFFICIAL'S REPORT Application of Masterplan, Represented by Trenton Robertson for a (1) special exception to the fence height regulations at 5505 CHATHAM HILL RD. This property is more fully described as Block 7/5597, Lot 22, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4-feet. The applicant proposes to construct a 9-foot fence in a required front yard, which will require (1) a 5-foot special exception to the fence regulations.

LOCATION: 5505 Chatham Hill

APPLICANT: Masterplan, Represented by Trenton Robertson

REQUEST:

(1) A request for a special exception to the fence height regulations.

STANDARD FOR A SPECIAL EXCEPTION:

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 any special exception to the code.

Background information:

1. BDA190-068 Approved: Multiple electric meters to single-family use (August 31, 2020)
2. BDA178-086 Approved: Variance to front yard and additional dwelling unit for a single-family use and fence standards (October 24, 2018)

Zoning:

Site: R-1 ac (A)
North: R-1 ac (A)
South: R-1 ac (A)
East: R-1 ac (A)
West: R-1 ac (A)

Land Use:

The subject site is developed with a residential structure. Areas to the North, South, East, and West are developed with residential uses.

GENERAL FACTS/STAFF ANALYSIS:

- This is a request for a special exception to the fence height regulations. The applicant proposes to construct a 9-foot fence in a required front yard, which will require a 5-foot special exception to the fence regulations.
- The subject property is located at 5505 Chatham Hill Road and is zoned R-1ac (A).
- It is imperative to note that the Board of Adjustment granted the approval of the fence standards for this property in October of 2018. The request to construct a 9-foot-high fence in a required front yard and to construct 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 lot line. Both requests were granted with compliance with the submitted plans and elevations.
- The applicant is now proposing a different material which is different than the approved elevations depicted; therefore, they are having to return to the Board as the request was granted to comply with the submitted elevations.
- The applicant is proposing a metal mesh fence which differs from the previously approved elevations, chain link.
- The applicant proposes the fence material will be chain link to metal mesh.

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- The applicant has the burden of proof in establishing that the special exception to the fence regulations will not adversely affect the neighboring property.
- Granting this special exception to the fence standards relating to height up to 9-feet with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.

Timeline:

- June 02, 2023: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- June 26, 2023: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- July 11, 2023: The Board of Adjustment Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application
 - an attachment that provided the public hearing date and panel that will consider the application; the July 25, 2023, deadline to submit additional evidence for staff to factor into their analysis; and the Friday, August 04, 2023, deadline to submit additional evidence to be incorporated into the Board’s docket materials
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- July 26, 2023: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August 16, 2023, public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Board of Adjustment Senior Planners, the Board of Adjustment Development Code Specialist, Project Coordinator the Chief Arborist, Assistant City Attorney (Matthew Sapp) and the Development Services Senior Engineers
- July 29, 2023: The engineering department submitted a comment sheet.
- August 16, 2023: The Board of Adjustment Panel B, at its public hearing held on August 16, 2023, moved to **HOLD** this matter under advisement until October 18, 2023.
- October 5, 2023: The applicant submitted revised drawings.
- October 18, 2023: The applicant submitted revised drawings during hearing.
- October 18, 2023: The Board of Adjustment Panel B, at its public hearing held on Wednesday, October 18, 2023, moved to **HOLD** this matter under advisement until November 15, 2023.
- November 3, 2023: The applicant submitted revised drawings.

Speakers:

For: Jim Harris, 6930 Midbury, Dallas TX 75230
Karl Crawley, 2201 Main Street # 1280, Dallas TX 75201
(Did not speak)
Steve Long, 2201 Main Street # 1280, Dallas TX 75201
(Did not speak)

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-074, on application of Masterplan, **GRANT** the request of this applicant to construct and/or maintain a 9-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the most recent version of all plans submitted on November 3, 2023 with revision on Zone 3 with maximum of 8-feet and Zone 2 with maximum of 9-feet.

Maker:	Michael Karnowski				
Second:	Derrick Nutall				
Results:	4-1				Motion to grant
		Ayes:	-	4	Cheri Gambow, Phil Sahuc, Michael Karnowski and Derrick Nutall
		Against:	-	1	Sarah Lamb

Recess: 2:12 p.m.: Resume: 2:22 p.m.

INDIVIDUAL CASES

7. 4104 Saranac drive

BDA223-098 (KMH)

BUILDING OFFICIAL'S REPORT Application of Laguna Homes Inc., for (1) a special exception to the fence height regulations, and for (2) a special exception to the fence standards regulations at 4104 Saranac Dr. This property is more fully described as Block 11/6147, Lot 1 and is zoned R-7.5(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 an 8-foot-high fence in a required front yard, which will require a (1) 4-foot special exception to the fence regulations, and to construct a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5-feet from the front lot line, which will require a (2) special exception to the fence regulations.

LOCATION: 4104 Saranac Dr

APPLICANT: Laguna Homes Inc.

REQUEST:

- (1) A request for a special exception to the fence height regulations; and
- (2) A request for a special exception to the fence opacity standard regulations.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT STANDARDS REGULATIONS:

Section 51A-4.602(b)(2) of the Dallas Development Code states that the board may grant a special exception to the fence regulations when in the opinion of the board, the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE OPACITY STANDARD REGULATIONS:

Section 51A-4.602(a)(11) of the Dallas Development Code states that the board may grant a special exception to the fence regulations when in the opinion of the board, the special exception will not adversely affect neighboring property.

STAFF RECOMMENDATION:

Special Exceptions (2):

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

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single Family District)
North: R-7.5 (A) (Single Family District)
East: R-7.5 (A) (Single Family District)
South: R-7.5(A) and R-10(A) (Single Family Districts)
West: R- 7.5(A) (Single Family District)

Land Use:

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

BDA History:

No BDA history

GENERAL FACTS/STAFF ANALYSIS:

- The application Laguna Homes, Inc., for the property located at 4104 Saranac Drive focuses on 2 requests relating to the fence height and fence opacity regulations.
- The applicant proposes to construct and maintain an 8-foot-high fence in a required front yard, which will require a 4-foot special exception to the fence height regulations.

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- Secondly, the applicant is proposing to construct and 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 requires a special exception to the fence opacity regulations.
- The subject site along with properties to the north, east, south and west are all developed with single-family homes.
- As gleaned from the submitted site plan and elevations, the applicant is proposing to construct and maintain an 8-foot-high board on board pre-stained cedar wood fence along Lively Lane.
- It is imperative to note that the subject site is a corner lots and it has two street frontages, Saranac Drive and Lively Lane. It is important to also note that where the applicant is proposing to construct the fence would typically be a side yard, if the site was not a corner lot.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The Dallas Development Code also states that no fence panel having less than 50 percent open surface area may be located less than 5-feet from the lot line.
- The applicant has the burden of proof in establishing that the special exception(s) to the fence regulations will not adversely affect the neighboring properties.
- Granting the special exceptions to the fence standards relating to height and opacity with a condition that the applicant complies with the submitted site plan and elevations, would require the proposal to be constructed as shown on the submitted documents.

Timeline:

September 13, 2023: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 2, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **B**.

October 4, 2023: 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 October 23, 2023, deadline to submit additional evidence for staff to factor into their analysis; and November 3, 2023, deadline to submit additional evidence to be incorporated into the board’s docket materials.
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 1, 2023: The Board of Adjustment staff review team meeting was held regard request and other requests scheduled for the November public

hearings. Review team members in attendance included: The Board of Adjustment Chief Planner/Board Administrator, the Development Services Senior Plans Examiner, the Assistant City Attorney to the Board, the Senior Planner Code Compliance staff.

Speakers:

For: Jason Malyk, 6624 Canyon Oaks Cir., Plano, TX 75024

Against: No Speakers

Motion # 1

I move that the Board of Adjustment, in Appeal No. BDA 223-098, on application of Jason Malyk for Laguna Homes Inc., **GRANT** the request of this applicant to construct and/or maintain a 8-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the most recent version of elevations submitted not to include materials are required.

Maker:	Sarah Lamb			
Second:	Phil Sahuc			

Motion # 2

Motion to withdraw the motion

Maker:	Sarah Lamb			
Second:	Phil Sahuc			

Motion # 3

I move that the Board of Adjustment, in Appeal No. BDA 223-098, on application of Jason Malyk for Laguna Homes Inc., **GRANT** the request of this applicant to construct and/or maintain a 8-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the most recent version of the elevations not to include materials.

Maker:	Sarah Lamb			
Second:	Michael Karnowski			

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Results:	4-1				Motion to grant
		Ayes:	-	4	Sarah Lamb, Phil Sahuc, Michael Karnowski and Derrick Nutall
		Against:	-	1	Cheri Gambow

Motion # 4

I move that the Board of Adjustment, in Appeal No. BDA 223-098, on application of Jason Malyk for Laguna Homes Inc., **DENY** the special exception requested to construct and/or maintain a fence, with panel having less than 50 percent open surface area, located less than five-feet from the front lot line as a special exception to the surface area openness by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

Maker:	Sarah Lamb				
Second:	Phil Sahuc				
Results:	5-1 Unanimously				Motion to deny
		Ayes:	-	5	Cheri Gambow, Sarah Lamb, Michael Karnowski, Phil Sahuc, and Derrick Nutall
		Against:	-	0	

Recess: 2:52 p.m.; Resume: 2:59 p.m.

ADJOURNMENT

After all business of the Board of Adjustment had been considered, Vice-Chair Gambow moved to adjourn the meeting at 3:25 p.m.



Required Signature:

Mary Williams, Board Secretary
Development Services Dept.

12/13/23

Date



Required Signature:

Jason Pool, DEV Administrator
Development Services Dept.

12/13/23

Date



Required Signature:

Cheri Gambow, Vice-Chair
Board of Adjustment

12/13/23

Date