



BOARD OF ADJUSTMENT

Panel C Minutes

November 13, 2023

6ES Briefing Room

24957316190@dallascityhall.webex.com

[bex.com](https://www.dallas.gov/webex)

Robert Agnich, Vice-Chair

PRESENT: [5]

| | |
|-------------------|--|
| Robert Agnich, VC | |
| Rodney Milliken | |
| Jared Slade | |
| Judy Pollock | |
| Roger Sashington | |
| | |

ABSENT: [0]

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Vice-Chair Agnich called the briefing to order at **10:34 A.M.** with a quorum of the Board of Adjustment present.

Vice-Chair Agnich called the hearing to order at **1:00 P.M.** with a quorum of the Board of Adjustment present.

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

PUBLIC SPEAKERS

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

- We had no speakers for public testimony during this hearing.

MISCELLANEOUS ITEMS

Approval of the Board of Adjustment Special Call Meeting Minutes.

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

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

Approval of the Board of Adjustment Panel C, July 17th, 2023 Minutes.

Motion was made to approve Panel C July 17th, 2023 public hearing minutes.

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

UNCONTESTED ITEMS

1. 12100 Preston Road
BDA223-088(KMH)

****Vice Chair Robert Agnich has stepped out of the room due to conflict of interest with Case BDA223-088, Board Member Andrew Finney has joined the Board to have a full quorum. ****

BUILDING OFFICIAL’S REPORT: Application of Dr. Kenneth H. Cooper represented by Hudson Lockett for (1) a special exception to the landscaping and tree mitigation regulations at 12100 Preston Rd. This property is more fully described as Block 4/7460, Lot 1, and is zoned PD-68, which requires mandatory landscaping and tree mitigation. The applicant proposes to construct and/or maintain a nonresidential structure and provide an alternate landscape plan for tree mitigation, which will require (1) a special exception to the landscape and tree preservation regulations.

LOCATION: 12100 Preston Road

APPLICANT: Dr. Kenneth H. Cooper

REPRESENTED BY: Hudson Lockett

REQUEST:

- (1) A request for a special exception to the landscaping and tree mitigation 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 properties.

BDA HISTORY:

No BDA History found in the last five years.

Zoning:

Site: PD 68
North: PD 68
South: PD 30, PD 64, TH-3(A) MF-1 (A) P (A) and R-16(A)
East: PD 100
West: R-16 (A)

Land Use:

The subject site is developed with a fitness center. The area to the immediate north are affiliated with the subject site. The areas to the south, east, and west are developed with single-family uses and some town house units.

GENERAL FACTS/STAFF ANALYSIS:

- A request for a special exception to the landscaping and tree mitigation regulations is made to construct and maintain a nonresidential structure.
- The purpose of this request is to provide an alternate landscape plan.

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- The property is heavily wooded with many open vistas and landscape features throughout the campus including ponds, trails, and other amenities. The required landscape plan includes most of the trees on the proposed tree mitigation plan.
- The development on the site causes the removal of 20" Class 2 pecan (14" mitigation); a 30" significant live oak (45" mitigation); 24" significant pecan (36" mitigation); and a 20" Class 2 pecan (14" mitigation). The total mitigation for the project is 190".
- The property mitigation of planting 18" of new nursery stock trees complies with Article X which leaves 91" of tree replacement to be completed.
- The applicant reports that eight memorial trees were planted from 1998 to 2019. This includes six oaks, one pecan and one Ginkgo for a cumulative current total of 75 diameter inches and growing. The request seeks to find credit for the installation and growth of the memorial trees on the property.
- The applicant reports that three trees measuring a cumulative 96 inches were "saved" in working with the Public Works Department during off-site infrastructure improvements along Willow Lane. The preservation of the trees required an engineered solution in the right-of-way but had no tree mitigation responsibility on the adjacent property owner due to the public street improvement.
- The applicant has the burden of proof in establishing that the special exception to the landscape regulations will not adversely affect the neighboring property.
- If the Board were to grant this special exception request and impose a condition that the applicant complies with the submitted site plan, the proposal of the alternate landscape plan would be limited to what is shown on this document.
- [BDA223-088 12100 Preston Road](#) (200' Radius Video)

Timeline:

- August 4, 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.
- September 1, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.
- 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 September 25, 2023, deadline to submit additional evidence for staff to factor into their analysis; and October 6, 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.

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September 27, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the October 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.

October 4, 2023: The Chief Arborist provided a memo that states, “no objection to the proposed tree mitigation plan as identified on submitted exhibit dated July 12, 2023 because the proposal will not adversely affect neighboring property.

Speakers:

For: Brad Wilkins, 12100 Preston Road, Dalls TX 75230
(Did not speak)
Hudson Lockett, 5738 Velasco, Dallas TX 75206
(Did not speak)

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-088, on application of Dr. Kenneth Cooper, **GRANT** the request of this applicant for a special exception to the landscape requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property and testimony shows that **(1)** strict compliance with the requirements of this article will unreasonably burden the use of the property; **(2)** the special exception will not adversely affect neighboring properties, and **(3)** the requirements are not imposed by a site-specific landscape plan or tree mitigation plan approved by the city plan commission or city council.

BDA223-088 —Application of Dr. Kenneth Cooper a special exception to the landscape requirements contained in Article X in the Dallas Development Code, is **GRANTED** subject to the following condition:

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

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|----------|-----------------|----------|---|---|---|
| Maker: | Judy Pollock | | | | |
| Second: | Rodney Milliken | | | | |
| Results: | 5-0 | | | | Motion to grant |
| | | Ayes: | - | 5 | Judy Pollock, Roger Sashington, Rodney Milliken, Jared Slade, and Andrew Finney |
| | | Against: | - | 0 | |

****Vice Chair Robert Agnich back in the room at 1:13 pm****

2. 3344 Topeka Avenue

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

BDA223-086(KMH)

BUILDING OFFICIAL'S REPORT: Application of Sixto Diaz for (1) a variance to the front yard setback regulations at 3344 Topeka Ave. This property is more fully described as Block C/7097, Lot 10, and is zoned R-5(A) NSO13, which requires a front yard setback of 20-feet. The applicant proposes to construct and/or maintain a single-family residential structure and provide a 7-foot front yard setback, which will require (1) a 13-foot variance to the front yard setback regulations.

LOCATION: 3344 Topeka Ave.

APPLICANT: Sixto Diaz

REQUEST:

- (2) 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:

- (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.

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:

- A. Not contrary to the public interest as no letters of opposition were received.
- B. 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.
- C. Not a self-created or personal hardship.

BDA HISTORY:

No BDA history found within the last 5 years.

Zoning:

Site: R-5(A) NSO13 Single Family District
North: R-5 (A), PD 802, SUP 1894, A(A)
South: R-5 (A) Single Family District
East: R-5 (A) Single Family District
West: R-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 13-feet is made to construct and/or maintain a single-family residential structure.

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- The subject site is surrounded by single family homes.
- The Dallas Development Code and the NSO13 regulations require a 20-foot front yard setback.
- As gleaned from the submitted site plan, the applicant proposes to construct a new single-family residential home providing a 7-foot front yard setback.
- It is imperative to note the lot lies within the 500-year floodplain and the 100-year floodplain, according to Engineering and Floodplain Management notes, which ultimately limits the buildable area of the lot.

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.

The board may also consider **State Law/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 13-foot variance to the front yard setback regulations with a condition that the applicant complies with the submitted site plan, would require the proposal to be constructed as shown on the submitted documents.
 - **BDA223-086 3344 Topeka** (200' radius video)

Timeline:

- July 31, 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.
- September 1, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **C**.
- 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 September 25, 2023, deadline to submit additional evidence for staff to factor into their analysis; and October 6, 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.
- September 27, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the October 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: Frances Cervantez, 3344 Topeka Ave, Dallas TX 75212

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-086, on application of Sixto Diaz, **GRANT** the 13-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.

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|---------|--------------|--|--|--|
| Maker: | Jared Slade | | | |
| Second: | Judy Pollock | | | |

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|----------|--------------------|----------|---|---|--|
| Results: | 5-0 Unanimously | | | | Motion to grant |
| | | Ayes: | - | 5 | Robert Agnich, Judy Pollock, Roger Sashinton, Rodney Milliken, Jared Slade |
| | | Against: | - | 0 | |

3. 5327 Richard Avenue

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

BDA223-087(KMH)

BUILDING OFFICIAL’S REPORT: Application of Brad Butz for a (1) variance to the side yard setback regulations at 5327 Richard Ave. This property is more fully described as Block 21/1941, Lot 22 and is zoned CD-15, which requires a side yard setback of 10-feet. The applicant proposes to construct and/or maintain a single-family residential structure and provide a 3-foot side yard setback, which will require (1) a 7-foot variance to the side yard setback regulations.

LOCATION: 5327 Richard Ave.

APPLICANT: Brad Butz

REQUEST:

- (3) A request for a variance to the side-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:

- (D) **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.
- (E) **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
- (F) **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:

Denial

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 as the side yard setback along the east side of the property is greater (10') than that of the side yard setback on the west side of the property (5');
- F. Self-created hardship as construction started without obtaining a building permit.

BDA HISTORY:

BDA 056-040: Special exception to maintain a carport for a handicap person in the required side yard setback and provide a 1-foot side yard setback, requiring a special exception of 4-feet to the side yard setback regulations. Denied.

BDA 034-121: Sign special exception. Approved.

Zoning:

Site: CD-15- Conservation District
North: CD-15 Conservation District
South: CD-15 and R-7.5 (A) Single Family District
East: CD-15 Conservation District
West: CD-15 Conservation District

Land Use:

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

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the side yard setback regulations of 7-feet is made to construct and/or maintain a single-family residential structure.
- The subject site is surrounded by single-family homes.
- Conservation District 15 (CD-15) requires a side yard setback of 10-feet along the east side of the property, whereas the required setback along the west side of the property is 5-feet.
- As gleaned from the submitted site plan, the applicant proposes to construct and maintain a covered patio along the east side of the property providing a 3-foot side yard setback, requiring a 7-foot variance to the side yard setback regulations.

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

- That granting the variance to the side 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.

The board may also consider **State Law/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:

- (f) 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.
- (g) 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.
- (h) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement.
- (i) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (j) the municipality considers the structure to be a nonconforming structure.

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- Granting the proposed 7-foot variance to the side yard setback regulations with a condition that the applicant complies with the submitted site plan, would require the proposal to be constructed as shown on the submitted documents.
- BDA 223-087 - 5327 Richard Ave. (200' Radius Video)

Timeline:

August 3, 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.

September 1, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.

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 September 25, 2023, deadline to submit additional evidence for staff to factor into their analysis; and October 6, 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.

September 18, 2023: The applicant provided documentary evidence for the board to consider.

September 27, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the October 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: Brad Butz, 5327 Richard Avenue, Dallas, TX 75206

Against: No Speakers

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-087, on application of Bradley Butz, **GRANT** the 7-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 most recent version of all submitted plans are required.

| | | | | | |
|----------|-------------------|----------|---|---|---|
| Maker: | Jared Slade | | | | |
| Second: | Roger Sashingtono | | | | |
| Results: | 5-0 Unanimously | | | | Motion to grant |
| | | Ayes: | - | 5 | Robert Agnich, Roger Sashington, Judy Pollock, Rodney Milliken, and Jared Slade |
| | | Against: | - | 0 | |

4. 2622 Madera Street

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

BDA223-089(KMH)

BUILDING OFFICIAL’S REPORT Application of Daniel Hernandez represented by Axel Videl for (1) variance to the front yard setback regulations, and (2) for a special exception to the fence height regulations, and (3) for a special exception to the fence standards regulations at 2622 Madera St. This property is more fully described as Block 3/1974, Lot 6 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 and requires a front yard setback of 25 feet. The applicant proposes to construct a single-family residential structure and provide a 5-foot front yard setback, which will require (1) a 20-foot variance to the front yard setback regulations, and to construct an 8-foot-high fence in a required front yard, which will require (2) a 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 (3) a special exception to the fence regulations.

LOCATION: 2622 Madera St.

APPLICANT: Daniel Hernandez

REPRESENTED BY: Axel Videl

REQUEST:

- (1) A request for a variance to the front yard setback regulations;
- (2) A request for a special exception to the fence height regulations; and
- (3) 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.

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:

- (G) **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.
- (H) **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
- (I) **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:

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.

Variance:

Approval

Based upon the evidence presented and provided to staff, staff concluded that the request is:

- not contrary to public interest as no opposition was received;
- The site is restrictive as it is irregularly shaped and has two front yards, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning;
- It is not self-created.

BACKGROUND INFORMATION:

Zoning:

- Site: R-7.5 (A) (Single Family District)
North: R-7.5 (A) (Single Family District) and CD-15
East: R- 7.5 (A) (Single Family District)
South: R- 7.5 (A) (Single Family District); PD 462 and PD 990
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 of Daniel Hernandez for the property located at 2622 Madera Street focuses on several requests. The first request is for a variance to the 25-foot front yard setback regulations. The applicant is proposing to construct and maintain a residential structure, a pool, in the required front yard providing a 5-foot front yard setback, therefore, requiring a variance of 20-feet to the front yard setback regulations. It is imperative to note that the subject property has two street frontages, Madera Street and Bonita Ave. In a typical zoning R-7.5 district, most lots tend to have only one front yard; therefore, having two front yards and no rear yard makes it quite difficult to be developed in a manner commensurate with the development upon other parcels of land with the same zoning.
- Secondly, the applicant is requesting a special exception to the fence height regulations of 4-feet. The applicant is proposing to construct and maintain an 8-foot-high fence in the

required front yard along Bonita Ave.; requiring a 4-foot special exception to the fence height regulations.

- Additionally, the applicant proposes 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 developed with single-family homes.
- As gleaned from the submitted site plan and elevations, the applicant is proposing to construct a pool providing a 5-foot front yard setback along Bonita Ave, which will require a 20-foot variance. Also, along Bonita Ave, the applicant is proposing to construct an 8-foot-high fence. As mentioned previously, this particular site is unique in nature as it has two street frontages but is not a corner lot. Having two street frontages does not allow for a rear yard. It is important to note that where the applicant is proposing to construct the pool and the fence, would typically be a rear yard.
- 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 required yards must remain unobstructed; therefore, structures are not allowed within setbacks.
- 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.
- Regarding the request for the variance, 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.

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- The board may also consider **State Law/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 20-foot variance to the front yard setback regulations with a condition that the applicant complies with the submitted site plan, would require the proposal to be constructed as shown on the submitted documents.

- [BDA223-089 2622 Madera St.](#) (200' Radius Video)

Speakers:

For: Jorge Maliachi, 2622 Madera Street, Dallas TX 7520+

Against: No Speakers

Motion # 1

I move that the Board of Adjustment, in Appeal No. BDA 223-089, on application of Daniel Hernandez, **GRANT** the 20-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: | Jared Slade | | | | |
| Second: | Robert Agnich | | | | |
| Results: | 5-0 Unanimously | | | | Motion to grant |
| | | Ayes: | - | 5 | Robert Agnich, Judy Pollock, Rodney Milliken, Roger Sashington and Jared Slade |
| | | Against: | - | 0 | |

Motion # 2

I move that the Board of Adjustment, in Appeal No. BDA 223-089, on application of Daniel Hernandez, **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 all submitted plans are required.

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

Motion # 3

I move that the Board of Adjustment, in Appeal No. BDA 223-089, on application of Daniel Hernandez, **GRANT** the request of this applicant 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 requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

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

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

5. 2504 Maple Avenue

***This Case was moved to Individual Items**
BDA223-090(KMH)

BUILDING OFFICIAL'S REPORT: Application of Mohsen Heidari represented by Tate Frier for (1) a variance to the parking regulations at 2504 Maple. This property is more fully described as Block 1/949, Lot 7A, and is zoned PD-193 (HC), which requires parking to be provided. The applicant proposes to construct a nonresidential structure for a restaurant without drive-in or drive-through

service use and provide 61 of the required 80-parking spaces, which will require (1) a 19-space variance (24% reduction) to the parking regulations.

LOCATION: 2504 Maple

APPLICANT: Mohsen Heidari

REPRESENTED BY: Tate Frier

REQUEST:

(4) A request for a variance to the parking 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:

- (J) **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.
- (K) **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
- (L) **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:

Denial

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

- G. Not contrary to the public interest as no letters of opposition were received.
- H. The site is not restrictive in that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning;
- I. Self-created/personal hardship.

BDA HISTORY:

No BDA History found within the last 5 years.

Zoning:

Site: PD-193
North: PD-9
South: PD-193
East: PD- 193 and PD-877
West: PD-193

Land Use:

The subject site is developed with a restaurant. The areas to the north, south, east, and west are developed with commercial uses

GENERAL FACTS/STAFF ANALYSIS:

- A request for a variance to the off-street parking regulations of 19 spaces is made to construct and/or maintain a restaurant without drive-in or drive-through service use. The applicant proposes to provide only 61 of the required 80-parking spaces for the restaurant use, resulting in the need for a 24% reduction in the parking space requirements.
- As gleaned from the submitted site plan, the applicant is proposing to construct and/or maintain an estimated 8,000 square foot restaurant which requires approximately 80 off-street parking spaces and 2 handicapped spaces. As mentioned previously, the applicant is proposing to provide 61 of the 80 required off-street parking spaces; resulting in the need for a reduction in the number of parking spaces required.

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

- That granting the variance to the off-street parking 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 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

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- 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 **State Law/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:

- (k) 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.
 - (l) 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.
 - (m) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement.
 - (n) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (o) the municipality considers the structure to be a nonconforming structure.
- Granting the proposed 19-space variance to the off-street parking regulations with a condition that the applicant complies with the submitted site plan, would require the proposal to be constructed as shown on the submitted documents.
 - In granting a special exception under Paragraph (1), the board shall specify the use or uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
 - In granting the special exception under Paragraph (1), the board may establish a termination date for the special exception or otherwise provide for the reassessment of conditions after a specified period of time.
 - A special exception granted under Paragraph (1) does not exempt a use from satisfying more restrictive requirements for handicapped parking which may be imposed by the state of Texas.
- [BDA223-090 2504 Maple](#) (200' Radius Video)

Timeline:

- August 17, 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.
- September 1, 2023: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel **C**.
- 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 September 25, 2023, deadline to submit additional evidence for staff to factor into their analysis; and

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October 6, 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.

September 27, 2023: The Board of Adjustment staff review team meeting was held regarding this request and other requests scheduled for the October 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: Tommy Mann, 500 Winstead Bldg, Dallas TX 75201
Jonathan Pedcoar, 1177 West Georgia St, Vancouver, Canada

Against: No Speakers

[Vice Chair Agnich motion to suspend the 5-page maximum documentary evidence rules to show 16 page documentary evidence presented by the applicant, seconded by Board Member Roger Sashington.](#)

Motion

I move that the Board of Adjustment, in Appeal No. BDA 223-090, on application of Mohsen Heidari, **GRANT** the 19-space variance to the parking 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: | Rodney Milliken | | | | |
| Second: | Judy Pollock | | | | |
| Results: | 4-1 | | | | Motion to grant |
| | | Ayes: | - | 4 | Judy Pollock, Rodney Milliken, Roger Sashington and Jared Slade |
| | | Against: | - | 1 | Robert Agnich |

ADJOURNMENT

After all business of the Board of Adjustment had been considered, Vice-Chair Agnich moved to adjourn the meeting at **2:31 P.M.**

Mary Williams

Required Signature:
Mary Williams, Board Secretary
Development Services Dept.

12/11/2023


Date



Required Signature:
Jason Pool, DEV Administrator
Development Services Dept.

12/11/23

Date



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

12/11/2023

Date