

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE  
MONDAY, APRIL 18, 2022**

MEMBERS PRESENT AT BRIEFING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Judy Pollock, regular member, Rodney Milliken, regular member, Jared Slade, regular member, and Nick Brooks, alternate member

MEMBERS ABSENT FROM BRIEFING: None

MEMBERS PRESENT AT HEARING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Judy Pollock, regular member, Rodney Milliken, regular member, Jared Slade, regular member and Nick Brooks, alternate member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Attorney, Pamela Daniel, Senior Planner, Robyn Gerard, Senior Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, Diana Barkume, Senior Plans Examiner, Sarah May, Chief Planner, David Nevarez, Senior Traffic Engineer, and Phil Erwin, Arborist

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Attorney, Pamela Daniel, Senior Planner, Robyn Gerard, Senior Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, Diana Barkume, Senior Plans Examiner, Sarah May, Chief Planner, David Nevarez, Senior Traffic Engineer, and Phil Erwin, Arborist

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**11:03 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, **April 18, 2022 docket.**

**BOARD OF ADJUSTMENT ACTION: April 18, 2022**

**1:08 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel C amended March 21, 2022 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: April 18, 2022**

**MOTION: Pollock**

Approval of the Board of Adjustment Panel C amended March 21, 2022 public hearing minutes.

**SECONDED: Sashington**

**AYES: 5 – Milliken, Slade, Pollock, Agnich, Sashington**

**NAYS: 0**

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

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**FILE NUMBER: BDA212-032(PD)**

**BUILDING OFFICIAL'S REPORT:** Application of W.W. Willingham III for a special exception to the parking regulations at 10207 N. Central Expressway. This property is more fully described as part of lot 26 in City Block 7293 and is zoned an MU-2 Mixed Use District 2, which requires parking to be provided. The applicant proposes to maintain an existing commercial structure consisting of office and retail and personal service uses to provide 61 of the required 76 parking spaces, which will require a 15-space special exception (20 percent reduction) to the parking regulation.

**LOCATION: 10207 N. Central Expwy**

**APPLICANT: W.W. Willingham III**

**REQUEST:**

A request for a special exception to the off-street parking regulations of 15 spaces is made to maintain a commercial structure consisting of office and retail and personal service uses to provide 61 of the 76 required off-street parking spaces.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

Section 51A-4.311 of the Dallas Development Code states the following:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article *if the board finds*, after a public hearing, that *the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.* The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the 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.
- 4) In granting a special exception, the board may:
  - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;

- (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**STAFF RECOMMENDATION:**

Approval.

- Rationale:

The Transportation Development Services Senior Engineer reviewed the parking study and has no objections to the request.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: MU-2 Mixed Use District 2
- North: MU-2 Mixed Use District 2
- East: MU-2 Mixed Use District 2
- South: GO(A) General Office with a D-1 Liquor Control Overlay, SUP No. 2381
- West: MU-2 Mixed Use District 2

**Land Use:**

The subject site is developed with an existing commercial structure consisting of office, retail and personal service uses comprised of a vacant suite, a restaurant without drive-in or drive-through service use, a dry cleaning or laundry store, and an office use. Surrounding properties consist of North Central Expressway to the east, a hotel use to the south, a multifamily use to the west, and an auto-related use to the north.

**Zoning/BDA History:**

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

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

A request for a special exception to the off-street parking regulations of 15 spaces is made to maintain an existing commercial structure consisting of office, retail and personal service uses comprised of a vacant suite, a restaurant without drive-in or drive-through service use, a dry cleaning or laundry store, and an office use to provide 61 of the 76 required off-street parking spaces.

Per the Development Code, the off-street parking requirement utilizing the floor area provided for each of the proposed and existing uses is as follows. The existing office use consists of 1,200 square feet of floor area and requires one space for every 333 square feet of floor area for a total of four off-street parking spaces required. The vacant 2,000 square foot suite to be used for a retail use requires one spaces for every 200 square feet of floor area for a total of 10 off-street spaces required. The existing restaurant without drive-in or drive-through service use consists of approximately 1,950 square feet of floor area and requires one spaces for every 100 square feet of floor area for a total of 20 off-street spaces required. The existing personal service use consists of approximately 3,600 square feet of floor area and requires one spaces for every 200 square feet of floor area for a total of 18 off-street parking spaces required. Lastly the proposed restaurant use (previously a laundry) proposes to consist of approximately 2,400 square feet of floor area and requires one space for every 100 square feet of floor area for a total of 24 off-street parking spaces required. The net total of the five uses requires approximately 76 off-street parking spaces to be provided on-site, however the site proposes to provide 61 off-street parking spaces on-site.

The applicant provided a parking study to substantiate the request. The Transportation Development Services Senior Engineer has reviewed the parking study and has no objections to the request (**Attachment C**).

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

- The parking demand generated by the proposed commercial structure does not warrant the number of off-street parking spaces required; and,
- The special exception of 15 spaces (or a 20 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

As of April 8, 2022, no letters have been submitted in support of or in opposition to the request.

If the board were to grant this request a condition may be imposed that the special exception of 15 spaces shall automatically and immediately terminate if and when the aforementioned mix of uses is changed or discontinued.

## **Timeline:**

February 10, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 8, 2022: The Board Senior Planner emailed the representative the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

April 5, 2022: The representative provided additional evidence (parking study and revised site) for Board consideration (**Attachments A and B**).

April 11, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet marked "no objection" (**Attachment C**).

At the time of this report, a revised BO report was pending.

**BOARD OF ADJUSTMENT ACTION: April 18, 2022**

**APPEARING IN FAVOR:** W.W. Willingham 8525 Ferndale #204 Dallas, TX

**APPEARING IN OPPOSITION:** None.

**MOTION: Slade**

I move that the Board of Adjustment, in Appeal No. BDA 212-032, on application of W. W. Willingham, **grant** the request of this applicant for a 15-space special exception to the parking regulations contained in the Dallas Development Code, as amended, because our evaluation of the property and testimony shows that the parking demand generated by the use does not

warrant the number of off-street parking spaces and a special exception would not create a traffic hazard.

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

The special exception of 15-spaces shall automatically and immediately terminate if and when a restaurant without drive-in or drive-through service use is changed or discontinued.

**SECONDED: Pollock**

AYES: 5 – Milliken, Slade, Pollock, Brooks, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

**\*\*Vice-chair Agnich recused himself from case BDA212-032 due to conflict of interest. Roger Sashington accepted the Acting chair position during the case. Nick Brooks joined the panel as fifth member\*\***

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**FILE NUMBER:** BDA212-014(PD)

**BUILDING OFFICIAL'S REPORT:** Application of Danielle Mathews of Masterplan Texas for a special exception to the fence height regulations at 10625 Lennox Lane. This property is more fully described as Lot 3 in City Block C/5534 and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct and maintain an eight-foot-high fence in a required front yard, which will require a four-foot special exception to the fence regulations.

**LOCATION:** 10625 Lennox Lane

**APPLICANT:** Danielle Mathews of Masterplan Texas

**REQUEST:**

The request for a special exception to the fence standards regulations is made to construct and maintain an eight-foot-tall fence. The property is currently undeveloped and partially fenced along the southwestern portion of the site fronting Harry's Lane.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-1ac (Single Family District)
- North: R-1ac (Single Family District)
- East: R-1ac (Single Family District)
- South: R-1ac (Single Family District)
- West: R-1ac (Single Family District)

**Land Use:**

The subject site is currently undeveloped and partially fenced. Surrounding properties to the north, east, south, and west are developed with single-family uses.

**Zoning/BDA History:** There have been 10 related board cases in the vicinity within the last five years.

1. **BDA201-092:** On March 21, 2022, the Panel C, Board of Adjustment granted a request for a special exception to the fence height regulations at 10645 Lennox Lane.
2. **BDA167-047:** On April 17, 2017, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 10545 Lennox Lane.
3. **BDA167-140:** On December 11, 2017, the Panel C, Board of Adjustments granted a special exception to the fence standards at 10564 Lennox Lane.
4. **BDA178-038:** On May 21, 2018, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 10515 Lennox Lane.
5. **BDA178-111:** On October 18, 2018, the Panel B, Board of Adjustments granted a special exception to the fence height regulations at 10650 Strait Lane.
6. **BDA178-127:** On November 14, 2018, the Panel B, Board of Adjustments granted a special exception to the fence height regulations at 10747 Lennox Lane.
7. **BDA189-099:** On October 21, 2019, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 4554 Harrys Lane.
8. **BDA189-141:** On December 16, 2019, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at



- 4610 Catina Lane.
9. **BDA190-079:** On October 19, 2020, the Panel C, Board of Adjustments granted a special exception to the fence height regulations, and for a special exception to the visibility obstruction regulations at 4651 Cantina Lane.
  10. **BDA190-050:** On June 22, 2021, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 4610 Cantina Lane.

**GENERAL FACTS/STAFF ANALYSIS:**

The applicant requests a special exception to the fence height standards of four feet to construct and maintain portions of a fence with staggering heights ranging from eight to five feet. The applicant proposes a five-foot-five-inch-tall steel picket fencing along the southwestern most clip of the site. The fence continues counterclockwise moving east along Harry’s Lane at a length of 57-and-one-half feet. The fence transitions to a five-foot blackened steel picket sliding gate with a width of 25 feet. As the fence continues east, the five-foot-tall stone venue retaining wall and free-standing wall is proposed at a length of 232 feet along the southeastern most clip at the intersection of Harry’s Lane and Lennox Lane.

As the proposed fence continues north along the northeastern portion of the site along Lennox Lane, the proposed five-foot-tall steel picket fencing continues for 59 feet and connects to a 19-foot-long, five-foot-tall, blackened finish steel picket pivot gate. Beyond the pivot gate, the five-foot tall, blackened finish steel picket fence continues north along Lennox Lane at a length of 87-and-one-half feet then connects to a second five-foot-tall, 19-foot-long blackened finish steel plate picket gate. The proposed fence then continues north for 75-feet-and-one-half-inches to the northeastern most clip adjacent to the unimproved alley. As the fence continues along the northeastern most portion, parallel to the alley, the five-foot-tall, blackened finish steel picket fence continues beyond the required 45-foot visibility triangle at the alley at a length of 48 feet. The proposed fence then increases to an eight-foot-tall picket fence with a length of ten feet before it terminates beyond the 45-foot visibility triangle and beyond the required 40-foot front yard setback.

According to internal records, a demolition permit was issued to the property on November 1, 2021 to raze an approximately 5,881 square foot one-story single-family structure. Additionally, internal records reflect a building permit issued on March 31, 2022 for a single-family dwelling unit with approximately 21,097 square feet of floor area.

Section 51A-4.602(A)(2) and Section 51A-4.602(a)(3) of 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 subject site is zoned an R-1ac Single Family District and requires a minimum front yard setback of 40 feet.

Staff conducted a site visit of the subject site and the surrounding area and observed fences along Catina Lane, and Lennox Lane located in the front yard setbacks which appear to be

above four feet-in-height and located in the front yard setback, many of which have recorded BDA history (see the Zoning/BDA History section of this case report for details).

Additionally, the representative provided evidence (**Attachment A**) to staff which contains nine board cases related to height within the vicinity of the subject property that have been granted special exceptions to the fence height regulations.

As of April 8, 2022, there have been no letters in support of or opposition to the request.

The applicant has the burden of proof in establishing that the special exception to the fence standards regulation related to the height will not adversely affect neighboring properties.

Granting the special exception to the fence height regulations would require the proposal exceeding four feet-in-height in the front yard setback located along Harrys Lane, Lennox Lane, and the unimproved alley to be maintained in the locations, as shown on the site plan and elevation plan.

**Timeline:**

Dec. 10, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 8, 2022: The Board Senior Planner emailed the representative the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief

Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

April 8, 2022: The applicant’s representative submitted additional evidence (**Attachment A**).

**BOARD OF ADJUSTMENT ACTION: April 18, 2022**

**APPEARING IN FAVOR:** Karl Crawley 2201 Main St. #1280 Dallas, TX  
Danielle Mathews 2201 Main St. #1280 Dallas, TX  
Andrew Ruegg 2201 Main St. #1280 Dallas, TX

**APPEARING IN OPPOSITION:** None

**MOTION: Sashington**

I move that the Board of Adjustment, in Appeal No. BDA 212-014, on application of Danielle Mathews, **grant** the request for a special exception to the fence height and fence materials regulations in the Dallas Development Code, subject to the following condition:

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

**SECONDED: Pollock**  
**AYES: 5 –**Slade, Agnich, Sashington, Pollock, Milliken  
**NAYS: 0 –**

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

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**FILE NUMBER: BDA212-029(PD)**

**BUILDING OFFICIAL’S REPORT:** Application of Rob Baldwin of Baldwin Associates for a variance to the front yard setback regulations at 6745 Country Club Circle. This property is more fully described as Lot 6A in City Block N/2799 and is zoned Tract III within Conservation District No. 2, a Single-Family District, which requires a front yard setback of 60 feet. The applicant proposes to construct and maintain an existing single-family dwelling unit and provide a 30-foot-six-inch front yard setback, which will require a 29-foot-six-inch variance to the front yard setback regulations.

**LOCATION: 6745 Country Club Circle**

**APPLICANT: Rob Baldwin of Baldwin Associates**

**REQUESTS:**

A request for a variance to the front yard setback regulations of 30-feet six-inches is made to construct and maintain a dormer on an existing single-family dwelling situated in the front yard along Country Club Circle.

### **STANDARD FOR A VARIANCE:**

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

- 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
  - (e) the municipality consider the structure to be a nonconforming structure.

### **STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in CD-12 Tract III considering its restrictive lot area of 15,208 square feet. The applicant submitted evidence (**Attachments A and B**) comparing lot sizes within the same zoning district. Per the comparative analysis, the average lot area is 18,391 square feet. Additionally, the evidence reflects that compliance with the 60-foot front yard would result in a loss of

50 percent of the appraised value of the home since 50 percent of the structure was built within the front yard setback when the home was constructed in 1986 while CD III was established in 1988. Thus, in analyzing the comparative properties the restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: Tract III within Conservation District No. 2
- North: Tract III within Conservation District No. 2
- South: Planned Development District No. 517
- East: Tract III within Conservation District No. 2
- West: Tract III within Conservation District No. 2

**Land Use:**

The subject site is developed with a single-family dwelling. Surrounding properties to the west, north, and east are developed with single-family dwellings while the property immediately adjacent to the south is developed with a country club with private membership [Lakewood Country Club].

**Zoning/BDA History:**

There have been two related board cases in the vicinity within the last five years.

1. BDA190-061: On August 18, 2020, the Panel A Board of Adjustment granted a variance to the landscape regulations to allow a fence in the front yard, a special exception to the height regulations to construct and maintain a nine-foot-high fence and denied without prejudice a special exception to construct and maintain fence panels with a surface area less than 50 percent openness located less than five feet from the front lot lines at 6608 Gaston Avenue.
2. BDA189-086: On August 21, 2019, the Panel B Board of Adjustment granted requests for variances to the front yard setback regulations of up to 36 feet to: 1. Construct and maintain an addition that would connect an existing nonconforming single family home structure to an existing nonconforming detached garage/accessory – an addition that is proposed to be located 24’ from one of the site’s two front property lines (Gaston Avenue) or 36’ into this 60’ front yard setback; 2. To address/remedy the existing single family home and garage structures built in the early 80’s that are nonconforming structures located 30’ from the site’s Gaston Avenue front property line or 30’ into this 60’ front yard setback, and to address/remedy the aforementioned existing single family home structure located 30’ from the other front property line on Country Club Circle or 30’ into this 60’ front yard setback at 6771 Country Club Circle.

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

This request focuses on constructing and maintaining an addition consisting of a dormer on the second floor along the southeastern facade of the existing single-family dwelling unit that is situated along a front yard (Country Club Circle). The subject site lies in Tract III within Conservation District No. 2, which requires a minimum front yard setback of 60 feet.

The portion of the existing single-family dwelling is non-conforming to front yard setback as it is constructed 28-feet into the required 60-foot front yard setback. Therefore, a variance is required to allow the dormer.

The property is somewhat irregularly shaped and sloped, as evidenced by the sloped driveway. Additionally, the property is 15,208 square feet, which is 17 percent smaller than the average lot size in Tract III (18,391 square feet) per evidence (**Attachments A and B**) and compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll of 50 percent of the appraised value provided by the applicant.

A site plan has been submitted denoting the existing dwelling unit with the proposed dormer addition located 35 feet from the front property line along Country Club Circle.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same Tract III within Conservation District No. 2.

The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same Tract III within Conservation District No. 2.

Additionally, 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:

- 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;
- 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;
- Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

- Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- The municipality consider the structure to be a nonconforming structure.

As of April 8, 2022 no letters have been submitted in support of or in opposition of the request.

If the board were to grant this front yard setback variance request and impose the submitted site plan as a condition, development would be limited to what is shown on this document. Granting this variance request will not provide any further relief from the Dallas Development Code regulations.

**Timeline:**

February 11, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 8, 2022: The Board Senior Planner emailed the representative the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

March 28, 2022: The representative provided evidence for Board consideration (**Attachments A & B**).

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development

Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.



**BOARD OF ADJUSTMENT ACTION: April 18, 2022**

**APPEARING IN FAVOR:** Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

**APPEARING IN OPPOSITION:** None.

**MOTION: Sashington**

I move that the Board of Adjustment, in Appeal No. BDA 212-029, on application of Rob Baldwin, **grant** the variance to the front yard setback regulations in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

**SECONDED: Pollock**

**AYES:** 5 – Milliken, Slade, Pollock, Agnich, Sashington

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA212-024(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Karen Tellez for special exceptions to afford a handicapped person equal opportunity to use and enjoy a dwelling at 7643 Rosemont Road. This property is more fully described as Lot 1-C, Block C-1/6289, and is zoned an R-7.5(A) Single Family District, where 1) an accessory structure may not exceed 25 percent of the floor area of the main structure; and, 2) the number of dwelling units is limited to one.

**LOCATION:** 7643 Rosemont Road

**APPLICANT:** Karen Tellez

**REQUESTS:**

The applicant proposes to construct an additional dwelling unit (not for rent), which will require a special exception to the single-family use regulations, and to construct a single-family residential accessory structure with 800 square feet of floor area (66.2 percent of the 1,208 square foot floor area of the main structure), which will require a 498-square-foot special exception to the floor area ratio regulations.

**STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED:**

Section 51A-1.107(b)(1) states that the board of adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The

term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

**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) Single-Family District  
West: R-7.5(A) Single-Family District

**Land Use:**

The subject site and all surrounding properties contain single-family uses.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

The following requests for special exceptions for the handicapped focus on constructing and maintaining an additional dwelling unit (not for rent) with a floor area greater than 25 percent of the main structure to afford a handicapped person equal opportunity to use and enjoy a dwelling.

The site is zoned an R-7.5(A) Single Family District, which permits a maximum of one dwelling unit per lot. Additionally, this district allows all accessory structures on a site to equal 25 percent or less of the floor area of the main structure.

The submitted site plan and elevation plans denote one single-family dwelling structure with 1,208 square feet of floor area. DCAD records corroborate the house size, constructed in 1958, and show no additional improvements on the property. Internal City records show that a permit for an 800-square-foot detached garage was requested on March 19, 2020. Subsequently, a second permit for an accessory structure was sought on April 1, 2021, again for an 800-square-foot detached accessory structure. Neither permit has been completed.

Staff conducted a site visit of the property and surrounding area. Due to the property being gated, only a small portion of the interior lot was visible, with a detached structure located in the rear yard.

Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

A copy of the “handicap” definition from this act was provided to the Board Administrator by the City Attorney’s Office. Section 3602 of this act states the following:

“(h) “Handicap” means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person’s major life activities,
2. a record of having such an impairment, or
3. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”

Therefore, the board is to consider this special exception for the handicapped request solely on whether they conclude that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

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

- The special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and
- There is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.

As of April 8, 2022, the applicant did not provide any evidence and no letters have been received regarding this request.

If the board were to grant the requests, typical conditions include compliance with the submitted site plan and that the special exceptions expires when a handicapped person no longer resides on the property. Additionally, due to the request for an additional dwelling unit, a suitable condition consistent with other ADU requests is for the board to require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**Timeline:**

January 20, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 15, 2022: The Board Administrator 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 March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board

April 8, 2022: No evidence, review sheets, or letters have been received.

**BOARD OF ADJUSTMENT ACTION: April 18, 2022**

**APPEARING IN FAVOR:** Karen Tellez 1005 W. Jefferson #205. Dallas, TX

**APPEARING IN OPPOSITION:** Amando Navarro 7705 Rosemont Rd. Dallas, TX  
Claudia Farias 7705 Rosemont Rd. Dallas, TX

**MOTION#1: Pollock**

I move that the Board of Adjustment, in request No. BDA 212-024, on application of Karen Tellez, **deny** the request to construct and maintain an accessory dwelling unit on a site developed with a single-family structure as a special exception to afford a handicapped person equal opportunity to use and enjoy a dwelling as requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application is not necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

**SECONDED: Milliken**

AYES: 5 – Milliken, Slade, Pollock, Agnich, Sashington  
NAYS: 0 - Agnich  
MOTION PASSED: 5-0 (unanimously)

**MOTION#2: Pollock**

I move that the Board of Adjustment, in Appeal No. BDA 212-024, on application of Karen Tellez, **deny** the special exception to the floor area ratio regulations to afford a handicapped person equal opportunity to use and enjoy a dwelling as requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application is not necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling

**SECONDED: Sashington**

AYES: 5 – Milliken, Slade, Pollock, Agnich, Sashington  
NAYS: 0 -  
MOTION PASSED: 5-0 (unanimously)

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**FILE NUMBER:** BDA212-025(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Carla Ysuhuaylas for a special exception to the single-family use regulations and a variance to the floor area ratio regulations at 10039 Shadyview Drive. This property is more fully described as Lot 23 in City Block C/7527 and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one and requires that the floor area ratio of an additional dwelling unit (not for rent) may not exceed 25 percent of the floor area ratio of the main structure. The applicant proposes to construct and maintain an additional dwelling unit ADU (not for rent) with a floor area ratio of 572 square feet or 28.8 percent of the 1,981-square-foot floor area of the main structure. As proposed, the request will require a special exception to the single-family use regulations and a 77-square-foot variance to the maximum floor area regulations for an accessory structure.

**LOCATION:** 10039 Shadyview Drive

**APPLICANT:** Carla Ysuhuaylas

**REQUESTS:**

The applicant proposes to construct and maintain an additional dwelling unit (not for rent) with approximately 572 square feet of floor area on a site developed with a single-family dwelling and an existing detached garage that has since been converted to an additional dwelling unit.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:**

The board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the

board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when *in the opinion of the board*, the additional dwelling unit will not adversely affect neighboring properties.

**STANDARD FOR A VARIANCE:**

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

- 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:
  - (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 consider the structure to be a nonconforming structure.

**STAFF RECOMMENDATION:**

Denial.

**Rationale:**

Staff has not received evidence. Therefore, staff cannot justify whether the subject site is restrictive in area, shape, or slope, and thus cannot be developed in a manner commensurate with other properties within the same zoning district.

**BACKGROUND INFORMATION:**

**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 and all surrounding properties 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:**

The request for a variance to the maximum floor area ratio regulations and a special exception to the single-family use regulations focus on constructing and maintaining a 572-square-foot additional dwelling unit (non-rent) on a property zoned an R-7.5(A) Single Family District. In this district, one dwelling unit is allowed per lot. Additionally, an additional dwelling unit (ADU) cannot exceed 25 percent of the maximum floor area of the main building.

DCAD records indicate the following improvements for the property located at 10039 Shadyview Drive: “main improvement: a structure with 1,980 square feet of living area built-in 1959” and “additional improvements: a 460-square-foot detached garage. However, the proposed site plan reflects the conversion of the detached garage which is the proposed additional dwelling unit. Internal records reflect that an application for the conversion of the detached garage was submitted on November 18, 2021.

The property is rectangular in shape, flat, and according to the application, contains 0.172 acres, or approximately 7,492 square feet in area. In an R-7.5(A) Single Family District the minimum lot size is 7,500 square feet. Since evidence was not provided staff cannot determine whether the subject site 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 district.

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

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

As of April 8, 2022, no letters have been submitted in support of or in opposition to the request.

Ultimately, the two requests are independent, and the board must consider the standards and evidence presented for each request.

If the board were to grant the variance to the maximum floor area ratio regulations for structures accessory to a single-family use and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on this document. Furthermore, if the board were to grant the special exception to allow the ADU, the Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

However, granting these requests will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all other code requirements), as depicted on the site plan, including the increase in floor area if each are approved by the board.

**Timeline:**

January 25, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 8, 2022: The Board Senior Planner emailed the representative the following information:



- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, the Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

**BOARD OF ADJUSTMENT ACTION: April 18, 2022**

**APPEARING IN FAVOR:** Carla Ysuhuaylas 5745 Bozeman Dr. #8446 Plano, TX

**APPEARING IN OPPOSITION:** Bill Daily 10042 Shadyview Dallas, TX  
Sharon Dorsey 10104 Parkford Dr. Dallas, TX  
Scott Lucia 10105 Shadyview Dr. Dallas, TX

**MOTION#1: Milliken**

I move that the Board of Adjustment, in request No. BDA 212-025, on application of Carla Ysuhuaylas, **deny** the special exception to construct and maintain an additional dwelling unit on a site developed with a single-family structure as requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

**SECONDED: Pollock**

**AYES:** 5 – Milliken, Slade, Pollock, Agnich, Sashington

**NAYS:** 0 -

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

**MOTION#2: Sashington**

I move that the Board of Adjustment, in Appeal No. BDA 212-025, on application of Carla Ysuhuaylas, **deny** the variance to floor area ratio regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Agnich

AYES: 5 – Milliken, Slade, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

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MOTION: Agnich

I move to adjourn the Panel C hearing.


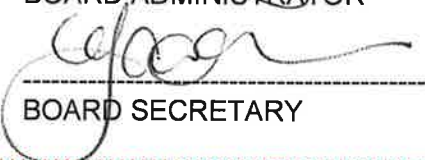
SECONDED: Sashington

AYES: 5 – Milliken, Slade, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 5 - 0

The meeting was adjourned at 3:45 P.M. on April 18, 2022

  
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CHAIRPERSON 5-16-22  
  
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BOARD ADMINISTRATOR  
  
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BOARD SECRETARY

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