

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE/COUNCIL CHAMBERS  
TUESDAY, JUNE 21, 2022**

MEMBERS PRESENT AT BRIEFING: David A. Neumann, Chair, regular member, Jay Narey, regular member, Sarah Lamb, regular member, Lawrence Halcomb, regular member and Kathleen Frankford, regular member

MEMBERS ABSENT FROM BRIEFING: None

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., Pamela Daniel, Senior Planner, LaTonia Jackson, Board Secretary, Charles Trammell, Consultation Manager, Jason Pool, Senior Planner, David Nevarez, Senior Engineer, and Andreea Udrea, Assistant Director.

MEMBERS PRESENT AT HEARING: David A. Neumann, Chair, regular member, Jay Narey, regular member, Sarah Lamb, regular member, Lawrence Halcomb, regular member and Kathleen Frankford, regular member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., Pamela Daniel, Senior Planner, LaTonia Jackson, Board Secretary, Charles Trammell, Consultation Manager, Jason Pool, Senior Planner, David Nevarez, Senior Engineer, and Andreea Udrea, Assistant Director.

**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 21, 2022** docket.

\*\*\*\*\*  
**1:11 P.M.**

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

\*\*\*\*\*

**MISCELLANEOUS ITEM NO. 1**

Approval of the May 17, 2022 Board of Adjustment Panel A Public Hearing Minutes

**BOARD OF ADJUSTMENT ACTION: June 21, 2022**

**MOTION: Lamb**

Approval of the May 17, 2022 Board of Adjustment Panel A Public Hearing Minutes

**SECONDED: Narey**

**AYES:** 5 – Lamb, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0

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

\*\*\*\*\*

**FILE NUMBER:** BDA212-050(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Rob Baldwin, Baldwin Associates representing Bob and Jennifer Family Trust for a special exception to the fence height regulations at 10602 Bridge Hollow Court. This property is more fully described as Lot 4 in City Block G/5518 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 a six-foot-eight-inch-tall fence in a required front yard, which will require a two-foot-eight-inch special exception to the fence regulations.

**LOCATION:** 10602 Bridge Hollow Court

**APPLICANT:** Rob Baldwin, Baldwin Associates representing Bob and Jennifer Family Trust

**REQUEST:**

The applicant proposes a fence of six-feet eight-inches-in-height, constructed of wrought iron with three-eighths-by-two-inch solid bars spaced four inches on-center with two-inch-by-two-inch-and-three-sixteenths of an inch posts located along Bridge Hollow Court. The site is developed with a two-story single-family dwelling unit.

**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:**

<u>Site:</u>	R-1ac(A) (Single Family District) and private street easement
<u>North:</u>	R-1ac(A) (Single Family District) and private street easement
<u>East:</u>	R-1ac(A) (Single Family District)
<u>Southeast:</u>	R-1ac(A) (Single Family District)
<u>South:</u>	R-1ac(A) (Single Family District)
<u>Southwest:</u>	R-1ac(A) (Single Family District)
<u>West:</u>	R-1ac(A) (Single Family District)

### **Land Use:**

The subject site is developed with a single family use. Surrounding properties to the north east, southeast, south, southwest, and west are developed with single-family uses as well.

### **Zoning/BDA History:**

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

1. BDA212-014: On April 18, 2022, the Panel C Board of Adjustment granted a special exception to the fence height regulations to construct and maintain an eight-foot-tall fence in a required front yard, which required a four-foot special exception at 10625 Lennox Lane.
2. BDA201-092: On March 21, 2022, the Panel C Board of Adjustment granted a special exception to the fence height regulations to construct and maintain a nine-foot-tall fence in a required front yard, which required a five-foot special exception at 10645 Lennox Lane.
3. BDA201-083: On September 22, 2021, the Panel B Board of Adjustment granted a special exception to the fence height regulations to construct and maintain a six-foot-four-inch-tall fence in a required front yard, which required a two-foot-four-inch-tall special exception at 4727 Kelsey Road.
4. BDA190-079: On October 19, 2020, the Panel C Board of Adjustment granted a special exception to the visibility obstruction regulations to construct a seven-foot-high fence in a required front yard, which will require a three-foot special exception to the fence regulations, and to construct a single-family residential fence structure in a required visibility obstruction triangle, which required a special exception to the visibility obstruction regulations at 4651 Catina Lane.
5. BDA190-050: On June 22, 2020, the Panel A Board of Adjustment granted a special exception to the fence height regulations to construct an eight-foot six-inch-high

- fence in a required front yard, which required a four-foot six-inch special exception to the fence regulations at 4610 Catina Lane.
6. BDA189-099: On October 21, 2019, the Panel C Board of Adjustment granted a special exception to the fence height regulations to construct and maintain a six-foot-tall fence in a required front yard, which required a two-foot special exception to the fence regulations at 4554 Harry's Lane.
  7. BDA189-083: On August 20, 2019, the Panel A Board of Adjustment granted a special exception to the fence standards regulations to construct and maintain an eight-foot-tall fence in a required front yard, which required a four-foot special exception to the fence regulations at 5300 Royal Lane.

**GENERAL FACTS/STAFF ANALYSIS:**

The subject site is zoned an R-1ac(A) Single Family District and requires a minimum front yard setback of 40 feet. 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 request for a special exception to the fence height regulations of two-feet-eight-inches is made to construct and maintain a six-foot eight-inch-tall fence. According to the elevation provided, the proposed fence will consist of wrought iron with three-eighths-by-two-inch solid bars spaced four inches on-center with two-inch-by-two-inch-and-three-sixteenths of an inch posts located along Bridge Hollow Court.

Per Dallas County Appraisal District, DCAD, the property is developed with a two-story single-family dwelling unit constructed in 2019. The single-family dwelling unit consists of approximately 13,210 square feet of floor area, an underground pool, an approximately 3,312-square-foot basement, two attached garages consisting of approximately 2,526 square feet, an approximately 1,188-square-foot outdoor living area, and attached quarters consisting of approximately 1,193 square feet.

The following information is shown on the submitted site plan:

- The proposed fence along Bridge Hollow Court would be located approximately 34 feet from the front lot line with an approximate length of 70 feet.

As of June 10, 2022, no letters have been submitted in support of the request and no letters have been submitted in opposition to the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of six-foot-eight-inches-tall located on Bridge Hollow Court will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to the height and opacity would require the proposal exceeding four feet in height in the front yard setback located along Bridge Hollow Court to be maintained in the locations and height as shown on the site plan and elevation plan.

## **Timeline:**

April 15, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents (**Attachments A & B**) that have been included as part of this case report.

May 2, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 2, 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 May 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 10<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.”

May 26, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the 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 Conservation District Chief Planner, the Board Senior Planner, and the Assistant City Attorney to the Board.

**BOARD OF ADJUSTMENT ACTION: June 21, 2022**

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

**APPEARING IN OPPOSITION:** None.

**MOTION: Lamb**

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

**BDA 212-050**—application of Bob and Jennifer Family Trust represented by Rob Baldwin for a special exception to the fence height requirements in the Dallas development code is granted subject to the following condition:

Compliance with the submitted site plan and elevation is required.

**SECONDED: Halcomb**

**AYES:** 5 – Narey, Frankford Lamb, Halcomb, Neumann

**NAYS:** 0 -

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

\*\*\*\*\*

**FILE NUMBER:** BDA212-049(PD)

**BUILDING OFFICIAL'S REPORT:** Application of Rob Baldwin, Baldwin Associates representing Hudson CG LLC for special exceptions to the fence height and fence standards regulations at 4256 Park Lane. This property is more fully described as a tract of land in City Block 5548 and is zoned an R-10(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line. The applicant proposes to construct an eight-foot-tall fence with fence panels that do not meet the minimum opacity requirement in a required front yard, which will require a four-foot special exception to the fence regulations and a special exception to the fence standards regulations.

**LOCATION:** 4256 Park Lane

**APPLICANT:** Rob Baldwin, Baldwin Associates representing Hudson CG LLC

**REQUEST:**

The applicant proposes a fence of eight-feet-in-height, constructed of an iron sliding gate, stucco walls with cast stone caps, stucco columns with cast stone caps, and iron fencing painted black located along Park Lane with a width of 125 feet. The site is currently being constructed with a two-story single family dwelling unit.

**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-10(A) (Single Family District)  
Northwest: R-10(A) (Single Family District)  
Northeast: R-10(A) (Single Family District)  
East: R-10(A) (Single Family District)  
South: R-10(A) (Single Family District)  
West: R-10(A) (Single Family District)

**Land Use:**

The subject site is currently under construction with a single-family use. Surrounding properties to the northwest, northeast, east, south, and west are developed with single-family uses as well.

**Zoning/BDA History:**

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

1. BDA190-074: On August 18, 2020, Panel A, Board of Adjustment granted a special exception to the fence height regulations to construct and maintain six-foot-six-inch-high fence in a required front yard, which required a two-foot-six-inch special exception at 4211 Brookview Drive.
2. BDA190-042: On June 24, 2020, Panel B, Board of Adjustment granted a request for a special exception to the fence height regulations to construct and maintain a seven-foot-high fence in a required front yard, which required a three-foot special exception at 4523 Park Lane.

**GENERAL FACTS/STAFF ANALYSIS:**

The subject site is zoned an R-10(A) Single Family District and requires a minimum front yard setback of 30 feet. 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.

Two requests exist for the subject site. The first request for a special exception to the fence height regulations of four-feet is made to construct and maintain an eight-foot-tall fence which will require a four-foot special exception.

The second request for a special exception is made to the fence standards regulations 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 five feet from the front lot line.

The property is currently under construction. According to internal records, the property was permitted in August 2021 to be developed with a two-story single-family dwelling unit constructed. The single-family dwelling unit consists of approximately 9,972 square feet of floor area, an underground pool, a motor court, and a three-car attached garage.

According to the elevation plan submitted, the applicant proposes a fence with a maximum height of eight feet, constructed of stucco walls with cast stone caps, stucco columns with cast stone caps, and iron fencing painted black stucco walls with an iron sliding gate painted black.

Additionally, the following information is shown on the submitted site plan:

- The proposed fence with access gates along Park Lane runs along the front lot line with a depth of 56 feet.
- The portion of the fence where the iron gate is proposed is located or setback 31 feet from the front lot line.

As of June 10, 2022, no letters have been submitted in support of the request and no letters have been submitted in opposition to the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of eight feet located on Park Lane will not adversely affect neighboring properties.

Granting the special exceptions to the fence standards related to the height and opacity would require the proposal exceeding four feet-in-height in the front yard setback located along Park Lane to be maintained in the locations, heights, and opacity/openness as shown on the site plan and elevation plan.

**Timeline:**

April 15, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents (**Attachment A**) that have been included as part of this case report.

May 2, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 2, 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 May 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 10<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.”

May 26, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the 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 Conservation District Chief Planner, the Board Senior Planner, and the Assistant City Attorney to the Board.

**BOARD OF ADJUSTMENT ACTION: June 21, 2022**

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

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 212-049 **hold** this matter under advisement until **August 16, 2022**.

SECONDED: Halcomb

AYES: 5 – Lamb, Halcomb, Narey, Frankford, Neumann

NAYS: 0 –

MOTION PASSED: 5 - 0 (unanimously)

**\*\*\*Ms. Lamb’s original motion to hold until July 19, 2022 was approved to withdraw\*\*\***

\*\*\*\*\*

**FILE NUMBER:** BDA212-020(PD)

**BUILDING OFFICIAL’S REPORT:** Application of **Stephen Marley** for 1) a variance to the side yard setback regulations of five-feet to construct an accessory structure zero feet from the property line, within a required five-foot side yard setback; and, 2) a variance to the single-family use regulations to construct and maintain a 778.5-square-foot accessory structure (29 percent of the 2,701-square-foot floor area of the main structure) which will require a 103.25-square-foot variance to the floor area ratio of the main structure at 1218 N. Clinton Avenue. This property is more fully described as Lot 5 in City Block 15/3802 and is zoned Subarea 1 within Conservation

District No. 13, in which a minimum side yard setback of five feet must be maintained, and an accessory structure may not exceed 25 percent of the floor area of the main structure.

**LOCATION:** 1218 N. Clinton Avenue

**APPLICANT:** Stephen Marley

**REQUESTS:**

The applicant proposes to construct and maintain an accessory structure with approximately 778.5 square feet of floor area wholly into a required five-foot side yard setback on a site developed with a single-family dwelling.

**UPDATES:**

On May 24, 2022, the applicant provided revised evidence (**Attachment A**) consistent with staff's calculations. As a result, on May 25, 2022, staff revised the BO report (**Attachment D**) to reflect the consistent calculations as well as the staff report for the request.

**STANDARD FOR A VARIANCE:**

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

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

**STAFF RECOMMENDATION (Side yard variance and FAR variance):**

Approval, subject to compliance with the submitted site plan:

Rationale:

Staff concluded that the subject site is unique and different from most lots in Subarea 1 within Conservation District No. 13 considering its restrictive lot area of 10,800 square feet. Evidence (**Attachment A**) provided by the applicant, reflects a comparison of six lots within the same zoning district. Per the comparative analysis, the average lot area is 13,894 square feet. 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: Subarea 1 within Conservation District No. 13  
North: Subarea 1 within Conservation District No. 13  
South: Subarea 1 within Conservation District No. 13  
East: Subarea 1 within Conservation District No. 13  
West: Subarea 1 within Conservation District No. 13

#### **Land Use:**

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

#### **Zoning/BDA History:**

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

1. **BDA201-082:** On September 20, 2021, Panel C, Board of Adjustment approved  
1) a variance to the side yard setback regulations of four-feet to construct an accessory dwelling unit one-foot from the property line, within a required five-foot side yard setback; and 2) a variance to the single-family use regulations to construct and maintain a 699-square-foot accessory structure (34.8 percent of the 2,005-square-foot floor area of the main structure) at 1107 S. Canterbury.
2. **BDA189-040:** On April 16, 2019, Panel A, Board of Adjustment denied a variance for to the off-street parking regulations of 15' is made to replace an existing approximately 360 square foot garage with parking spaces in it that are accessed from N. Edgefield Avenue to the east with a new approximately 650 square foot garage with parking spaces in it that would be accessed from the alley to the west – parking spaces in this new enclosed structure/garage that would be located 5' from the right-of-way line adjacent to the alley or 15' into the 20' required distance these enclosed parking spaces must be from the alley right-of-way line on a site developed with a single family home at 1107 N. Edgefield Avenue.
3. **BDA189-052:** On May 21, 2019, Panel A, Board of Adjustment approved a variance to the front yard setback regulations to provide a 21-foot front yard setback, which will require a 51-foot variance to the front yard setback at 1828 Kessler Parkway.
4. **BDA178-033:** On March 21, 2018, Panel B, Board of Adjustment approved a variance to the front yard setback regulations of 19' is requested to construct and maintain the aforementioned structure 16' from the front property line or 19' into the required 35' front yard setback; 2. a variance to the off-street parking regulations of 4' is requested as the proposed home would have parking spaces in an enclosed structure (an attached garage) that would be located 16' from the right-of-way line adjacent to the street or as much as 4' into the required 20' distance from the right-of-way line adjacent to Kessler Parkway at 2016 Kessler Parkway.
5. **BDA178-030:** On March 19, 2018, Panel C, Board of Adjustments approved a variance to the front yard of setback 11-foot-three-inch variance to the front yard setback regulations to provide a 20-foot three-inch front yard setback at 1520 Olympia Drive.

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

The subject property zoned Subarea 1 within Conservation District No. 13. In this district, a minimum side yard setback of five feet is required. Additionally, an accessory structure cannot exceed 25 percent of the floor area ratio of the main structure. The requests for variances to the side yard setback and maximum floor area ratio regulations focus on constructing and maintaining a 778.5-square-foot accessory structure. The proposed unit is 29 percent of the 2,701-square-foot floor area of the main structure, which will require a 103.25-square-foot variance to the floor area ratio of the main structure. While the first story of the existing structure encroaches wholly into the required five-foot side yard setback, the proposed second story addition will comply with the required five-foot side yard setback. Sec. 51A-4.402(b)(3) of the Dallas Development Code allows encroachment of a structure accessory to a residential use, including a generator, if the structure a) does not exceed 15 feet in height, and b) is located in the rear 30 percent of the lot. Additionally, Sec. 51A-4.403(b)(2) of the Development Code allows the encroachment of structures accessory to a residential use, including a generator with the same requirements, however, where the rear yard is adjacent to an alley a minimum three-foot rear yard setback is required.

DCAD records indicate the following improvements for the property located at 1218 N. Clinton Avenue: “main improvement”: a structure with 2,018 square feet of living area built-in 1924” and “additional improvements”: a 400-square-foot detached garage, a 232-square-foot “detached quarters,” and a swimming pool. The DCAD calculations do not include the proposed addition of 684 square feet to the second story.

The site plan depicts an existing one-story accessory structure with approximately 287 square feet of floor area. The applicant proposes to construct a second story accessory structure with approximately 778.5 square feet, with the proposed second story addition in compliance with the side yard setback while the existing first story encroaches wholly into the required five-foot side yard setback. The second story addition with stairs will equate to approximately 29 percent of the existing 2,701-square-foot floor area ratio of the main structure.

The property is irregular in shape since it is neither rectangular nor square and according to the application, contains 0.248 acres, or approximately 10,802 square feet in lot area. In Subarea 1 within Conservation District No. 13 the minimum lot size is 7,500 square feet. However, properties within the vicinity are one-and-one-half times greater than the minimum lot size.

The applicant has submitted evidence (**Attachment A**) comparing the lot sizes of the subject site with six adjacent properties in the same zoning district. Thus, staff concludes that the subject site is unique and different from most lots in Subarea 1 within Conservation District No. 13 considering its restrictive lot area of 10,800 square feet. Per the comparative analysis, the average lot area is 13,894 square feet and 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.

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

- That granting the variances 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 variances are 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 variances 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 June 10, 2022, staff has received 16 letters in support of the request and none in opposition to the request.

If the board were to grant a variance to the floor area regulations and a variance to the side yard setback for structures accessory to single-family uses 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. However, granting these variances will not provide any relief to the Dallas Development Code regulations other than allowing an additional structure on the site to exceed the floor area ratio and encroach into the side yard setback as depicted on the site plan (i.e. development on the site must meet all other code requirements).

**Timeline:**

- January 7, 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. Additionally, the applicant submitted evidence (**Attachment A**) with the application.
- March 1, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 3, 2022: The Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the February 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 4<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 2, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board. No review comment sheets were submitted in conjunction with this application.

March 22, 2022: The Board held the request under advisement until April 19, 2022.

April 8, 2022: The applicant requested a postponement (**Attachment B**) to allow more time to garner support from neighbors.

April 19, 2022: The Board held the request under advisement until May 17, 2022.

April 27, 2022: The applicant provided revised evidence (**Attachment A**).

May 17, 2022: The Board held the request under advisement until June 17, 2022 to allow accuracy in calculation in reviewing the revised site plan.

May 24, 2022: The applicant provided revised evidence (**Attachment A**) and a revised site plan (**Attachment C**) consistent with staff's calculations.

May 25, 2022: Staff revised the BO report (**Attachment D**) to reflect the consistent calculations for the request.

BOARD OF ADJUSTMENT ACTION: May 17, 2022

APPEARING IN FAVOR: Stephen Marley 1218 N. Clinton Ave. Dallas, TX  
Fred Pena 410 E. 5<sup>th</sup> St. Dallas TX

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment in request No. BDA 212-020, hold this matter under advisement until June 21, 2022.

SECONDED: Halcomb

AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: April 19, 2022

APPEARING IN FAVOR: Stephen Marley 1218 N. Clinton Ave. Dallas, TX  
Jason Michael 1300 W. Canterbury Dallas TX

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment in request No. BDA 212-020, hold this matter under advisement until May 17, 2022.

SECONDED: Halcomb

AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: March 22, 2022

APPEARING IN FAVOR: Alfredo Pena 410 E. 5<sup>th</sup> St. Dallas, TX  
Stephen Marley 1218 N. Clinton Ave. Dallas, TX  
Jason Michael 1300 W. Canterbury Dallas TX

APPEARING IN OPPOSITION: None.

MOTION: Halcomb

I move that the Board of Adjustment in request No. BDA 212-020, hold this matter under advisement until April 19, 2022.

SECONDED: Frankford

AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: June 21, 2022**

APPEARING IN FAVOR: Stephen Marley 1218 N. Clinton Ave. Dallas, TX

APPEARING IN OPPOSITION: None.

**MOTION#1: Frankford**

I move that the Board of Adjustment, in Appeal No. BDA 212-020, on application of Stephen Marley represented by Alfredo Pena, **grant** the 103.25-square-foot variance to the floor area ratio regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

**SECONDED: Lamb**

**AYES:** 5 – Narey, Frankford Lamb, Halcomb, Neumann

**NAYS:** 0 -

MOTION PASSED: 5-0 (unanimously)

MOTION#2: Frankford

I move that the Board of Adjustment, in Appeal No. BDA 212-020, on application of Stephen Marley represented by Alfredo Pena, **grant** the five-foot variance to the side yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

**SECONDED: Lamb**

**AYES:** 5 – Narey, Frankford Lamb, Halcomb, Neumann

**NAYS:** 0 -

MOTION PASSED: 5-0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA212-031(JM)

**BUILDING OFFICIAL’S REPORT:** Application of German G. Sierra for a variance to the parking regulations at 1805 S. Edgefield Avenue. This property is more fully described as Lots 14,15,16, and Pt of Lots 17,18, Block 2/4742, and is zoned a CR Community Retail District, which requires parking to be provided.

**LOCATION:** 1805 S. Edgefield Avenue

**APPLICANT:** German G. Sierra

**REQUESTS:** The applicant proposes to maintain a nonresidential structure for a restaurant without drive-in or drive-through service use, and provide three of the required 48 **17** parking spaces, which will require a 45-**14**-space variance (~~83-33~~ **82.35** percent reduction) to the parking regulations.

**UPDATE:** On June 10, 2022, the applicant provided additional information including a presentation (**Attachment C**), a site plan (**Attachment D**), and an alternate site plan



(Attachment E). More support letters were also provided which are included in the letters section of materials for this case. All revised information is highlighted.

**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:

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

## **STAFF RECOMMENDATION: ENGINEER OPINION**

Approval, subject to the following condition:

- Compliance with the submitted **revised** site plan is required.

Rationale:

- The Transportation Development Services Senior Engineer reviewed the submitted evidence (**Attachment A**) and found no objection to the variance request (**Attachment B**).

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	CR Community Retail District
<u>North:</u>	R-7.5(A) Single Family District
<u>East:</u>	R-7.5(A) Single Family District
<u>South:</u>	CR Community Retail District
<u>West:</u>	R-7.5(A) Single Family District

### **Land Use:**

The subject site is being redeveloped with a restaurant without drive-in or drive-through service use (coffee shop). All surrounding properties are developed with single-family uses.

### **Zoning/BDA History:**

1. **Z178-142:** an authorized hearing to determine proper zoning on this site and adjacent CR District properties in Elmwood. No action taken.

## **GENERAL FACTS/STAFF ANALYSIS**

The subject site is zoned CR Community Retail District, where the typical lot size varies significantly. Per DCAD records, the property is 6,680 square feet-in-size with a 1,235-square-foot structure erected in 1948, and a 400-square-foot detached accessory structure (no date provided). The property is located at the southwest corner of Tennessee Avenue and South Edgefield Avenue **and has additional frontage along an alleyway to the west**. The applicant is seeking to maintain these structures to house a coffee shop. **The coffee shop is considered a restaurant use and requires parking at a ratio of one space per 100 square feet of floor area.**

The applicant states that due to the residential configuration and size of the lot, the property cannot be used in a manner commensurate to other properties with the same CR District zoning (**Attachment A**), some found within the same Elmwood area.

According to the site plan submitted with the request, the detached accessory structure contains 446 square feet. Combined with the main structure of 1,235 square feet, the total restaurant area is considered 1,681 square feet and requires a minimum of 17 parking spaces.

However, the parking required, ratio for the land use, and parking reduction for providing bicycle parking were misstated. It should also be noted that bicycle parking reductions are only allowed if the total required parking is 20 spaces per Sec.51A-4.314.

On June 10, 2022, the applicant submitted a revised site plan (**Attachment D**) which now shows the correct required parking ratio for a restaurant without drive-in or drive-through service use (coffee shop) at one space per 100 square feet of floor area. The site plan indicates that three spaces will be provided, plus 12 bicycle parking spaces which would only allow for a reduction for three spaces if the original parking requirement was for 20 or more parking spaces. Therefore, the variance request is for the remainder of 14 spaces.

An alternate site plan (**Attachment E**) was also provided on June 10<sup>th</sup> which identifies additional parking spaces within the 446-square-foot detached structure previously labeled as “dry storage area.” However, at the time of this report, the alternate plan had not been reviewed by staff for accuracy/compliance.

The applicant’s evidence includes supportive passages from a pending neighborhood plan WOCAP the West Oak Cliff Area Plan, as well.

Ultimately, the Transportation Development Services Senior Engineer reviewed the submitted evidence and found no objection to the variance request (**Attachment B**). *Due to the additional evidence and revised/alternate plans provided on June 10<sup>th</sup>, the senior engineer may provide a revised response by the hearing date.*

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

- That granting the variance to the 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 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 CR 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 CR zoning classification.

The board may also 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.

As of June 10, 2022, staff had received 32 letters of support of which 18 are within the 200-foot notification radius. No letters in opposition have been received.

If the board were to grant the variance request and impose the submitted revised site plan as a condition, the proposed parking would be limited to what is shown on this document. No additional relief is provided with this request.

**TIMELINE:**

February 2, 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 A.

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

March 21 & 30, 2022: The applicant submitted additional evidence for consideration (**Attachment A**).

March 31, 2022: The Transportation Development Services Senior Engineer submitted a comment sheet (**Attachment B**). *Due to the additional evidence and revised/alternate plans provided on June 10<sup>th</sup>, the senior engineer may provide a revised response by the hearing date.*

April 19, 2022: The Board of Adjustment Panel A decided to hold this case under advisement until June 21, 2022.

June 10, 2022: The applicant provided additional information including a presentation (**Attachment C**), a site plan (**Attachment D**), and an alternate site plan (**Attachment E**). More support letters were also provided which are included in the letters section of materials for this case.

**BOARD OF ADJUSTMENT ACTION:** April 19, 2022

**APPEARING IN FAVOR:** German Sierra 1805 S. Edgefield Ave. Dallas, TX

**APPEARING IN OPPOSITION:** None

**MOTION:** Lamb

I move that the Board of Adjustment, in Appeal No. BDA 212-031, hold this matter under advisement until June 21, 2022.

**SECONDED:** Narey

**AYES:** 5 – Lamb, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0-

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

**BOARD OF ADJUSTMENT ACTION:** June 21, 2022

**APPEARING IN FAVOR:** German Sierra 1805 S. Edgefield Dallas, TX

**MOTION:** Lamb

I move that the Board of Adjustment in Appeal No. BDA 212-049 **hold** this matter under advisement until **August 16, 2022**.

**SECONDED:** Frankford

**AYES:** 5 – Lamb, Halcomb, Narey, Frankford, Neumann

**NAYS:** 0 –

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

\*\*\*\*\*

MOTION: Neumann

I move to adjourn the Panel A hearing

SECONDED: Lamb

AYES: 5 - Lamb, Halcomb, Narey, Frankford, Neumann

NAYS: 0 -

MOTION PASSED (unanimously): 5 – 0

Recess- 2:00 p.m.

Resume- 2:05 p.m.

**3:02 P.M.** Board Meeting adjourned for **June 21, 2022**

\_\_\_\_\_  
CHAIRPERSON

-----  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

\*\*\*\*\*

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