

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, June 23, 2020**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Chair, Taylor Adams, regular member Sarah Lamb, regular member, Lawrence Halcomb, regular member, Jay Narey, regular member

MEMBERS ABSENT FROM BRIEFING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, David Nevarez, Senior Engineer, Charles Trammell, Development Code Specialist, Sarah May, Chief Planner, Phil Erwin, Chief Arborist, Jason Pool, Sign Code Specialist, Neva Dean, Assistant Director, Kris Sweckard, Director.

MEMBERS PRESENT AT HEARING: Cheri Gambow, Chair, Taylor Adams, regular member Sarah Lamb, regular member, Lawrence Halcomb, regular member, Jay Narey, regular member.

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, David Nevarez, Senior Engineer, Charles Trammell, Development Code Specialist, Sarah May, Chief Planner, Phil Erwin, Chief Arborist, Jason Pool, Sign Code Specialist, Neva Dean, Assistant Director, Kris Sweckard, Director.

10:08 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 23, 2020** docket.

1:01 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel A, May 19, 2020 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: June 23, 2020

MOTION: Adams

Approval of the Board of Adjustment Panel A, May 19, 2020 public hearing minutes.

SECONDED: Lamb

AYES: 5 – Gambow, Lamb, Adams, Halcomb, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-036(JM)

BUILDING OFFICIAL’S REPORT: Application of Olivia Howe for a variance to the side yard setback regulations at 4305 Colgate Avenue. This property is more fully described as Lot 34, Block 3/5631, and is zoned an R-7.5(A) Single Family District, which requires a side yard setback of five feet. The applicant proposes to construct and maintain a single family residential accessory structure and provide a three-foot side yard setback, which will require a two-foot variance to the side yard setback regulations.

LOCATION: 4305 Colgate Avenue

APPLICANT: Olivia Howe

REQUEST:

A request for a variance to the side yard setback regulations of two feet is made to complete and maintain the west facade of a single family home accessory structure located two feet from the site’s west side property line or three feet into the five-foot side yard setback.

STANDARD FOR A VARIANCE¹:

The applicant has the burden of proof in establishing the following standards have been met in consideration of granting the above request.

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,

¹ Reference Section 51(A)-3.102(d)(10) of the Dallas Development Code.

minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

1. 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.
2. 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
3. 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:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the applicant has shown (Attachment A) that a literal enforcement of this chapter would result in unnecessary hardship.
- According to the letter provided by the applicant (Attachment A), the subject site is unique and different from most lots zoned an R-7.5(A) Single Family District due to the restrictive area of the lot. Otherwise, the lot is flat and rectangular in shape.
- Granting the variance would not be contrary to public interest if the board imposes the submitted site plan as a condition since the features on this plan represent the only new structure to be located in the side yard setback is a two-story accessory structure proposed to be located three feet from southwest side property line or two feet into the five-foot side yard setback on a site developed with a single family structure.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single Family District)

North: R-7.5(A) (Single Family District)

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

Land Use:

The subject site and properties to the east, west, and south are developed with single family uses. The property to the north is developed with a church and private school.

Zoning/BDA History:

There have been no board cases and one zoning case recorded either on or in the immediate vicinity of the subject site.

1. **Z178-358:** On April 22, 2020, the City Council approved Planned Development District No. 1025 for mixed uses on property zoned Planned Development District No. 314, an MF-1(A) Multifamily District, and an R-7.5(A) Single Family District with Specific Use Permit No. 1172, located on the north side of Colgate Avenue, between Lomo Alto Drive and Douglas Avenue. *Across Colgate Avenue from the subject site.*

GENERAL FACTS /STAFF ANALYSIS:

The purpose of this request for variance to the side yard setback regulations of two feet is to complete and maintain an accessory structure located three feet from the site's southwest side property line, as shown in the submitted site plan. According to permit records, a permit for new construction was made on March 5, 2019. The application was subsequently cancelled and the new 998-square-foot, two-story accessory structure was erected on the existing slab.

The subject lot is 8,281 square feet in area, is rectangular in shape, and is relatively flat. The R-7.5(A) District requires a minimum lot area of 7,500 square feet. The applicant provided a list of comparative properties zoned an R-7.5(A) District and ranging in size from 9,108 to 20,386 square feet with an average of 13,483 square feet (Attachment A). Additional information found in this letter included a history of the redevelopment of the accessory structure, a garage. A contractor was hired to reconstruct the garage on the existing foundation and add a second story; however, the existing garage slab was allowed to maintain less than a five-foot side yard when it met the side yard provisions for accessory structures requiring the structure to be less than 15 feet-in-height and located within the rear 30 percent of the lot². The reconstructed garage could not maintain the three-foot side yard with the excess height created by the second story of the garage. The reconstructed two-story garage is approximately 24 feet-in-height.

As of June 12, 2020, 10 letters in support and none in opposition to the request had been received.

² Reference Section 51(A)-4.402(b)(3) of the Dallas Development Code.

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

- That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

If the board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document which, in this case, is a structure located two feet into the required five-foot side yard setback.

Timeline:

- January 24, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 11, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- February 14, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the February 25th deadline to submit additional evidence for staff to factor into their analysis; and the March 6th deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:
- a copy of the application materials including the Building Official’s report on the application.
 - 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.”

February 27, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Chief Planner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer.

February 24, 2020: The applicant submitted additional evidence regarding the request and a comparison to other similarly zoned properties (Attachment A) along with an engineering statement and other letters (Attachment B).

March 15, 2020: March BDA hearings were cancelled due to the emergency declaration.

June 4, 2020: Delayed cases scheduled for June hearing dates. Applicants advised of the June 12th deadline to submit documentary evidence and the June 19th deadline to register to speak at the virtual hearing.

No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: June 23, 2020

APPEARING IN FAVOR: Olivia Howe 4305 Colgate Ave. Dallas, TX.

APPEARING IN OPPOSITION: None

MOTION: **Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 190-036, on application of Olivia Howe, for a variance to the side yard setback regulations contained in the Dallas Development Code, is **granted**, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: **Narey**

AYES: 5 – Gambow, Adams, Halcomb, Lamb, Narey

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA190-028(JM)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin of Baldwin Associates for a variance to the front yard setback regulations at 1177 Lausanne Avenue. This property is more fully described as Lots 1A, 2A, and 3A, Block 8/3826 and is zoned Conservation District No. 13 Subarea 1, which requires a front yard setback of 25 feet for accessory structures. The applicant proposes to construct a single family residential accessory structure and provide a seven-foot six-inch front yard setback, which will require a 17-foot six-inch variance to the front yard setback regulations.

LOCATION: 1177 Lausanne Avenue

APPLICANT: Rob Baldwin of Baldwin Associates

REQUEST:

A request for a variance to the front yard setback regulations of 17-feet six-inches is made to construct a one-story accessory structure to be used as an open-air pool cabana, and is proposed to be located seven-feet, six-inches from one of the site’s two front property lines or 17-feet, six-inches into the 25-foot front yard setback on Olympia Drive on a site developed with a single family structure.

STANDARD FOR A VARIANCE³:

The applicant has the burden of proof in establishing the following standards have been met in consideration of granting the above request.

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:

- 4. 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.
- 5. 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

³ Reference Section 51(A)-3.102(d)(10) of the Dallas Development Code.

6. 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:

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 zoned CD 13 given its slope, its irregular shape, and restrictive area caused by it having two front yard setbacks. The subject site has a number of physical site constraints that preclude the applicant from developing it in a manner commensurate with development found on other similarly zoned CD 13 properties that are flat, rectangular in shape, and with one front yard setback.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that many other properties are able to maintain accessory structures; therefore, the request is commensurate to that what is found on 29 other properties in the same CD 13 zoning district.
- Granting the variance would not be contrary to public interest if the board imposes the submitted site plan as a condition since the features on this plan represent the only new structure to be located in the front yard setback is a one-story accessory structure to be used as an open-air pool cabana, and is proposed to be located seven feet, six inches from one of the site's two front property lines or 17-feet six-inches into the 25-foot front yard setback on Olympia Drive on a site developed with a single family structure.

BACKGROUND INFORMATION:

Zoning:

Site: CD 13, Subarea 1 (Kessler Park Conservation District)

North: CD 13, Subarea 1 (Kessler Park Conservation District)

East: CD 13, Subarea 1 (Kessler Park Conservation District)

South: CD 13, Subarea 1 (Kessler Park Conservation District)

West: CD 13, Subarea 1 (Kessler Park Conservation District)

Land Use:

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

Zoning/BDA History:

There have been two related board or zoning cases near the subject site within the last five years.

1. BDA 178-030, Property at 1520 Olympia Drive (adjacent to the west of the subject site) On March 19, 2018, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 11 feet, three inches. The case report stated the request was made to construct and maintain a “ventless firebox” and “planter/retaining wall” structures on a property developed with a single family home, which, according to the submitted revised site plan, would be located as close as 20 feet three inches from the front property line along Olympia Drive, or as much as 11 feet three inches into the 31-foot six-inch front yard setback.
2. BDA 167-009, Property at 1545 W. Colorado Boulevard (Property located within the cul-de-sac, west of the subject site) January 17, 2017, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 74 feet, seven inches, made to construct and maintain a fountain structure and fence on a property developed with a single family home, which, according to the submitted site plan, would be located five feet from one of the site’s two front property lines (Olympia Drive) or 69 feet five inches into the 74-foot seven-inch front yard setback along Olympia Drive.

GENERAL FACTS /STAFF ANALYSIS:

The request for variance for a variance to the front yard setback regulations of 17-feet six-inches is made to construct a one-story accessory structure to be used as an open-air pool cabana, and is proposed to be located seven feet, six inches from one of the site’s two front property lines or 17-feet six-inches into the 25-foot front yard setback on Olympia Drive.

The subject site is developed with a single family structure containing approximately 6,358 square feet of living area with a 540-square-foot basement erected in 1925, and accessory structures including a two-story, 972-square-foot detached garage with a 720-square-foot attached quarters, a 324-square-foot carport, and a swimming pool, per DCAD. The property is zoned Subarea 1 within CD 13, the Kessler Park Conservation District. Overall, lots in CD 13, Subarea 1 vary in size and shape, a quality that allowed for the preservation of the natural topography of the area, according to a letter submitted by the representative (Attachment A).

CD 13 states that for corner lots, the minimum front yard must equal that of the front yard of the house on the contiguous lot. In this case, the lot to the west of the subject site is fronting along Olympia Drive causing the area of request to require a front yard setback of 31-feet six-inches. Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned an R-7.5(A) Single Family District where the front yard setback is 25 feet. Additionally, the rounded triangular lot has frontage along the transition from West Colorado Boulevard into Lausanne Avenue, and along Olympia Drive. Both lot frontages are considered front yards, since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets⁴. Finally, CD 13 states that for accessory structures in a front yard, the required setback is 25 feet.

The applicant submitted a comparison table of 29 other nearby properties that appear to be in CD 13 (Attachment A). This table represents that the other properties also maintain a variety of accessory structures; however, the location of the structures was not apparent. Additional information provided describes Kessler Park as, “an area of north Oak Cliff that has topography and mature trees. The streets have gradual curves, which create some irregular corner lots, especially in Subarea 1.”

The site experiences the greatest topography along the Olympia Drive street frontage, the location of the proposed pool cabana encroaching into the required front yard. The lot is irregular, with a rounded triangular shape, and according to the application, is 0.83 acres or 36,154 square feet in size. Lots in CD 13 vary in size significantly. Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned an R-7.5(A) District where the typical lot size is 7,500 square feet.

As of June 12, 2020, six letters in support and no letters in opposition to the request had been received.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance to front yard setback regulations 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 CD 13 zoning classification.

⁴ Reference Section 51(A)-4.401(a)(5) of the Dallas Development Code.

The variance to front yard setback regulations would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 13 zoning classification.

If the board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the structures in the front yard setback would be limited to that what is shown on this plan – an open-air pool cabana located seven-feet six-inches from the front property line along Olympia Drive.

Timeline:

January 17, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 11, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

February 14, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the February 25th deadline to submit additional evidence for staff to factor into their analysis; and the March 6th deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:

- a copy of the application materials including the Building Official’s report on the application.
- 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.”

February 27, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Chief Planner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer.

March 5, 2020: The representative submitted an additional evidence regarding the neighborhood and request (Attachment A).

March 15, 2020: March BDA hearings were cancelled due to the emergency declaration.

June 4, 2020: Delayed cases scheduled for June hearing dates. Applicants advised of the June 12th deadline to submit documentary evidence and the June 19th deadline to register to speak at the virtual hearing.

No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: June 23, 2020

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

APPEARING IN OPPOSITION: None

MOTION: Narey

I move that the Board of Adjustment, in Appeal No. BDA 190-028, on application of Rob Baldwin of Baldwin Associates, **grant** the 17-foot 6-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Lamb

AYES: 5 – Gambow, Adams, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-048(JM)

BUILDING OFFICIAL’S REPORT: Application of Michael Cohen for a special exception to the parking regulations at **1108 Quaker St.** This property is more fully described as Lot 6, Block 66/7903, and is zoned an IR Industrial Research District, which requires parking to be provided. The applicant proposes to construct a nonresidential structure for a commercial amusement (inside) use, and provide 77 of the required 120 parking spaces, which will require a 43-space special exception (35.83 percent reduction) to the parking regulation.

LOCATION: 1108 Quaker Street

APPLICANT: Michael Cohen

REQUEST:

A request for a special exception to the off-street parking regulations of 43 spaces is made to allow an existing commercial amusement (inside) use with 5,940 square feet of floor area to expand into vacant adjacent suites to have a new floor area of 11,982 square feet, and to provide 77 parking spaces (or 64.17 percent) of the 120 required parking spaces for the subject site.

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)(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 the 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 this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval.

The Sustainable Development and Construction Senior Engineer has no objections to this request.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research District)

North: IR (Industrial Research District) and IM (Industrial Manufacturing District)

East: IR (Industrial Research District)

South: A(A) (Agricultural District)

West: MU-3 (Mixed-Use District) and IR (Industrial Research District)

Land Use:

The property contains a warehouse which was renovated and is partially used as an event venue, or commercial amusement (inside). Properties to the north, east, and west contain office showroom/warehouse uses. The property to the south is the Trinity River and levee system.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The purpose of this request for a special exception to the off-street parking regulations of 43 spaces is made to allow an existing commercial amusement (inside) use with 5,940 square feet of floor area to expand into vacant adjacent suites to have a new floor area of 11,982 square feet, and to provide 77 parking spaces (or 64.17 percent) of the 120 required parking spaces for the subject site.

The Dallas Development Code requires, one space for each 100 square feet of floor area for a commercial amusement (inside) use. According to the site plan provided, the entire property contains a warehouse which has been converted into 13 suites with ranges of floor areas and a cumulative floor area of 45,434 square feet. This request includes four of the suites and 11,982 square feet of floor area, requiring 120 parking spaces. The remaining 33,452 square feet of floor area will have to be parking by other means such as a shared parking agreement and remote parking. The property is shown to provide 77 parking spaces on-site. This request is to provide 77 parking spaces for the proposed 11,982-square-foot commercial amusement (inside).

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

- The parking demand generated by the commercial amusement (inside) use on the site does not warrant the number of off-street parking spaces required, and
- The special exception of 43 spaces would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

Along with the application, the applicant submitted a parking demand study to support the reduction in parking requested. The study identifies on page 6, that the facility will host private events and will “not rely solely on its parking supply, however, but will make heavy use of valet and encourage ride-hailing among its guests.” The study goes on to consider the surrounding parking availability and compare the proposed use to a similar facility. This study was reviewed by the City of Dallas Senior Engineer and found to support the reduction in parking requested.

On June 17, 2020, the applicant submitted additional documentation identifying the supply of parking on surrounding properties and an explanation of the demand required and proposed by this reduction (Attachment B).

If the Board were to grant this request, and impose the condition that the special exception of 43 spaces shall automatically and immediately terminate if and when the commercial amusement (inside) use is changed or discontinued, the site with an 11,982-square-foot commercial amusement (inside) use would be allowed to operate and provide 77 of the 120 code required off-street parking spaces.

Timeline:

February 19, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 11, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

February 14, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the February 25th deadline to submit additional evidence for staff to factor into their analysis; and the March 6th deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:

- a copy of the application materials including the Building Official’s report on the application.
- 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.”

February 27, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Chief Planner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer.

March 15, 2020: March BDA hearings were cancelled due to the emergency declaration.

June 4, 2020: Delayed cases scheduled for June hearing dates. Applicants advised of the June 12th deadline to submit documentary evidence and the June 19th deadline to register to speak at the virtual hearing.

No review comment sheets were submitted in conjunction with this application.

June 15, 2020: The City of Dallas Sustainable Development and Construction Senior Engineer submitted a memo regarding this application (see Attachment A).

June 17, 2020: The applicant provided additional evidence relating to the parking availability and demand (Attachment B).

BOARD OF ADJUSTMENT ACTION: June 23, 2020

APPEARING IN FAVOR: Michael Cohen 7106 Clemsen Dr. Dallas, TX.
Chuck Deshazo 400 S. Houston Ste. 330 Dallas, TX.
Alex Barron 400 S. Houston Ste. 330 Dallas, TX.

APPEARING IN OPPOSITION: Ed Oakley 5811 Lewis St. Dallas, TX.

MOTION: Narey

I move that the Board of Adjustment, in Appeal No. BDA 190-048, on application of Michael Cohen, **grant** the request of this applicant to provide 77 off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code, as amended, which require 120 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for a commercial amusement (inside) use only.

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

1. The special exception of 43 spaces shall automatically and immediately terminate if and when the commercial amusement (inside) use is changed or discontinued.
2. The applicant or property owner must submit a parking analysis of the site to the Board of Adjustment no later than June 23, 2022 for a reassessment of the conditions.

SECONDED: Lamb

AYES: 5 – Gambow, Adams, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-052(OA)

BUILDING OFFICIAL’S REPORT: Application of Raquel Renda, represented by Peter Dodd, for a special exception to the fence height regulations at 5830 Falls Road. This property is more fully described as Lot 4 and part of Lot 3 in Block A/5614, 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/or maintain a six-foot high fence in a required front yard, which will require a two-foot special exception to the fence regulations.

LOCATION: 5830 Falls Road

APPLICANT: Raquel Renda
represented by Peter Dodd

REQUESTS:

A request for a special exception to the fence standards regulations related to the maximum fence height of two feet is made to construct and maintain a six-foot high open iron fence and two six-foot open iron gates in the site’s front yard on a site that is developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA190-021, Property at 5830 Falls Road (the subject site) On February 18, 2020, the Board of Adjustment Panel A granted a request for a your request to maintain items in the visibility triangles at the driveway approach as a special exception to the visual obstruction regulations and impose the submitted site plan as a condition and denied a request to construct and maintain an eight-foot high solid stone/brick fence and two seven-foot-six-inch solid metal gates in the site's front yard and to construct and maintain the aforementioned eight-foot high solid stone/brick fence within five feet of the front lot line without prejudice.

GENERAL FACTS/STAFF ANALYSIS (fence standards special exceptions):

- This request for a special exception to the fence standards regulations related to height of two feet is made to construct and maintain a six foot high open iron fence and two six-foot open iron gates in the site's front yard on a site that is developed with a single family home.
- 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 applicant has submitted a site plan and elevation of the proposed fence. The site plan and elevation represent a fence that is over four feet in height (a six-foot high open iron fence and two six-foot open iron gates) in the site's required front yard.
- The following additional information was gleaned from the submitted site plan:
 - The proposed fence is approximately 115 feet in length parallel to Falls Road and runs an additional 40 feet perpendicular to Falls Road on both side property lines in the required front yard.
 - The minimum distance between the proposed fence and the pavement line is approximately 12 feet.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and the surrounding area and noted several other fences that appeared to be above four feet in height and located in a front yard setback. These existing fences have no recorded BDA history within the last five years.
- As of May 8, 2020, no letters have been submitted in support of or in opposition to this request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height, six-foot high open iron fence and two six-foot open iron gates in the site's front yard, will not adversely affect neighboring property.

- Granting this special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposed fence, which exceeds four feet in height in the front yard setback to be constructed and maintained in the location, heights, and materials as shown on these documents.

Timeline:

March 2, 2020: 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 17, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 23, 2020: The Sustainable Development and Construction Department Senior Planner emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 28th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standards that the board will use in their decision to approve or deny the requests; and
- The Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included the following: the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: June 23, 2020

APPEARING IN FAVOR: Peter Dodd 3550 Gulfing Green Dr. Farmers Branch, TX.

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 190-052, on application of Raquel Renda, represented by Peter Dodd, **grant** the request of this applicant to construct and/or maintain a six-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Narey

AYES: 5 – Gambow, Adams, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-063

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin of Baldwin Associates for a special exception to the sign regulations at 5535 W Lovers Lane. This property is more fully described as Lot 4, Block1/5012, and is zoned a CR Community Retail District, which prohibits non-monument signs within 250 feet of either private property in a non-business zoning district or a public park of more than one acre. The applicant proposes to construct a detached premises non-monument sign on a nonresidential premise within 250 feet of either private property in a non-business zoning district or a public park of more than one acre, which will require a special exception to the sign regulation.

LOCATION: 5535 W. Lovers Lane

APPLICANT: Rob Baldwin of Baldwin Associates

REQUEST: A request for a special exception to the sign regulations is made to place and maintain a non-monument sign within the 250-foot distance requirement from a residential property on a site developed with retail uses (two prospective tenants).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR A NON-MONUMENT SIGN WITHIN 250 FEET OF PRIVATE PROPERTY IN A NON-BUSINESS ZONING DISTRICT:

The Board of Adjustment may grant a special exception to allow a non-monument sign within 250 feet of private property in a non-business zoning district 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 sign regulations to allow a non-monument sign within 250 feet of private property in a non-business zoning district 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: CR (Community Retail District)
North: R-7.5(A) (Single Family Residential District)
South: CR (Community Retail District)
East: CR (Community Retail District)
West: CR (Community Retail District)

Land Use:

The site is being developed with two retail uses. The areas to the north are developed with single family uses; the areas to the south, east and west are developed with retail uses.

Zoning/BDA History:

There have not been any related board or zoning cases in the vicinity of the subject site within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The request focuses on placing and maintaining a non-monument sign within 250 feet from residential property on a site being developed with retail uses (two prospective tenants).

The Dallas Development Code states non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park of more than one acre.

The applicant has submitted a site plan and sign elevation. The site plan notes that the signboard of the proposed sign would be oriented to face east and west. The sign is not visible to the non-business zoning district immediately north of the subject site.

The subject sign is located approximately 200 feet from the nearest residential lot located north of the subject site. The applicant is placing a new two-tenant sign on a steel pipe (pole) with two new tenants in order to advertise these new retail tenants.

In October of 2004, the sign regulations were amended in ways that added the provision the applicant is seeking an exception from – non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park more than one acre.

The applicant submitted a revised site plan and elevation document stating, among other things, that the proposed two-tenant sign will be a 64-square-foot flag mount illuminated LED cabinet.

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

- That allowing a non-monument sign within 250 feet of private property in a non-business zoning district when, in the opinion of the board, the special exception will not adversely affect neighboring property.

If the board were to grant this request and impose the submitted site plan as a condition to the request, the sign would be held to the location as shown on this plan

- a site plan that notes that the signboard of the proposed replacement sign would be oriented to face east and west, and not to the non-business zoning district immediately north of the subject site.

Staff does not recommend imposing any sign elevation as a condition to this request since granting this special exception would not provide any relief to the sign regulations of the Dallas Development Code (i.e. height, effective area, or setback requirements) other than allowing a non-monument sign within 250 feet of private property in a non-business zoning district.

TIMELINE:

February 20, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 13, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 13, 2020: The Board of Adjustment Chief Planner/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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12, 2020 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.”

June 5, 2020: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment A).

June 3, 2020: The applicant forwarded a revised Building Official's report on this application to the Board Administrator (see Attachment B).

June 5, 2020: 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 following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Senior Engineer, the Board of Adjustment Senior Planner the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the board

No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: June 23, 2020

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

APPEARING IN OPPOSITION: None

MOTION#1: Halcomb

To grant the applicant's request for a special exception to allow a non-monument sign within 250 feet of a non-business area or a public park:

I move that the Board of Adjustment, in Appeal No. BDA 190-063, on application of Rob Baldwin of Baldwin Associates, **grant** the request of this applicant to locate one non-monument signs within 250 feet of private property in a non-business zoning district as a special exception to the sign regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan is required.

SECONDED: Narey

AYES: 2 –Halcomb, Narey

NAYS: 3 - Gambow, Adams, Lamb

MOTION FAILED: 2 – 3

MOTION#2: Lamb

This motion prevailed.

To deny the applicant's request:

I move that the Board of Adjustment, in Appeal No. BDA 190-063, on application of Rob Baldwin of Baldwin Associates, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Adams

AYES: 5 –Halcomb, Narey, Gambow, Adams, Lamb

NAYS: 0 -

MOTION FAILED: 5-0 (unanimously)

FILE NUMBER: BDA190-067(OA)

BUILDING OFFICIAL'S REPORT: Application of McDonalds's Corp represented by Clay Moore Engineering for a special exception to the parking regulations at 1717 W. Mockingbird Ln. This property is more fully described as Lot 4B, Block A/6061, and is zoned an IR Industrial Research District, which requires parking to be provided. The applicant proposes to construct a nonresidential structure for a restaurant with drive-in or drive-through service use, and provide 33 of the required 44 parking spaces, which will require an 11-space special exception (25 percent reduction) to the parking regulation.

LOCATION: 1717 W. Mockingbird Lane

APPLICANT: McDonalds USA Represented by ClayMoore Engineering

REQUEST:

A request for a special exception to the off-street parking regulations of 11 spaces is made to construct and maintain a restaurant with drive-in or drive-through service use structure and provide 33 of the 44 off-street parking spaces required by code.

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)(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 the 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 this chapter; or
- (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 11 spaces shall automatically and immediately terminate if and when the hotel use is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Senior Engineer indicated that he has no objections to this request.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research District)
North: IR (Industrial Research District)
South: MU-3 (Mixed Use District)
East: MU-3 (Mixed Use District)
West: IR (Industrial Research District)

Land Use:

The subject site is vacant. The area to the south, east, west, and north are developed with industrial and commercial uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

GENERAL FACTS/STAFF ANALYSIS:

This request for a special exception to the off-street parking regulations of 11 spaces focuses on constructing and maintaining a restaurant with drive-in or drive-through service use structure and provide 33 of the 44 off-street parking spaces required by code.

Chapter 51A-4.210 (25) (C) requires the following off-street parking requirement:

- Except as otherwise provided, one space per 100 square feet of floor area: with a minimum of four spaces. See additional provisions [Subparagraph (E)] for off-street stacking requirements. See Section 51A-4.304 for more information regarding off-street stacking spaces generally.

- The total number of stacking spaces required for this use is as follows:

The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections”.

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

- The parking demand generated by the proposed hotel use does not warrant the number of off-street parking spaces required, and
 - The special exception of 11 spaces (or a 25 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request and impose the condition that the special exception of 11 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service use change or discontinue, the applicant would be allowed to construct and maintain the structure on the site with these specific uses with the specified square footage, and provide 33 of the 44 code required off-street parking spaces.

Timeline:

April 21, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 13, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 13, 2020: The Board of Adjustment Chief Planner/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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12, 2020 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.”

June 5, 2020: 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 following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Senior Engineer, the Board of Adjustment Senior Planner the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the board.

June 11, 2020: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "Recommends Approval" (Attachment A).

BOARD OF ADJUSTMENT ACTION: June 23, 2020

APPEARING IN FAVOR: Clay Cristy 1903 Central Dr. #406 Bedford, TX.
Sam Cheema 1150 Empire Central Place #112 Dallas, TX.
Romit Cheema 1150 Empire Central Place #112 Dallas, TX.

APPEARING IN OPPOSITION: None

MOTION: Narey

I move that the Board of Adjustment, in Appeal No. BDA 190-067, on application of Lee Morris of McDonalds USA, represented by Clay Moore Engineering, **grant** the request of this applicant to provide 33 off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code, as amended, which require 44 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for a restaurant with drive-in or drive-through service use only.

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

The special exception of 11 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service use is changed or discontinued.

SECONDED: Halcomb

AYES: 5 – Gambow, Adams, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-044(OA)

BUILDING OFFICIAL’S REPORT: Application of Brian Baughman for a special exception to the sign regulations at 5500 Greenville Avenue. This property is more fully described as Block 1/5409 and is zoned an MU-3 Mixed Use District, which limits the number of detached signs on a premise to one per street frontage other than expressways and allows only one detached sign for every 450 feet of frontage. The applicant proposes to construct and maintain one additional detached premise sign, on a nonresidential premise, which will require a special exception to the sign regulations.

LOCATION: 5500 Greenville Avenue

APPLICANT: Brian Baughman

REQUEST:

A request for a special exception to the sign regulations is made to remodel and maintain an existing additional detached premise sign on a site that is developed with a shopping mall.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

Section 51A-7.703(d)(2) of the Dallas Development Code states that the Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

STAFF RECOMMENDATION (additional detached sign):

Denial

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the April 2th staff review team meeting that that the applicant had not substantiated that strict compliance with the requirement of the sign regulations (in this case, the site’s Greenville frontage being limited to one sign) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

BACKGROUND INFORMATION:

Zoning:

- Site:** MU-3 (Mixed Use District)
- North:** MU-3 (Mixed Use District)
- East:** PD No. 916 ((Planned Development District) & MU-3 (Mixed Use District)
- South:** PD No. 610 ((Planned Development District)
- West:** MU-3 (Mixed Use District)

Land Use:

The site is developed with a mix of retail and personal service uses. The area to the north, south, east and west are developed with mixed use and multifamily uses.

Zoning/BDA History:

There have not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

GENERAL FACTS/STAFF ANALYSIS (additional detached sign):

The property consists of over 15.79 acres of land developed as with a mix of retail and personal service uses. The request for a special exception to the sign regulations focuses on the remodeling and maintenance of an additional sign at the frontage along Greenville Avenue.

Section 51A-7.304(b) (4) of the Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways. The size of the property is not taken into account.

The submitted site plan indicates the location of two detached non-monument signs, (represented as “existing sign number one and number 2”) on the site’s Greenville Avenue frontage, hence this request for a special exception to the sign regulations for an additional detached sign. A sign elevation denoting the second detached non-monument sign has been submitted.

The applicant submitted a document with the application that does not substantiate that strict compliance with the requirement of the sign regulations will result in inequity to the applicant without sufficient corresponding benefit to the city and its citizens.

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

- That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign along the street frontage) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

If the board were to approve the request for a special exception to the sign regulations, the board may consider imposing a condition that the applicant complies with the submitted site plan and sign elevation.

Timeline:

February 7, 2020: 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 17, 2020: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel A.

March 23, 2020: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; April 28th deadline to submit additional evidence for staff to factor into their analysis; and the June 3th deadline to submit additional evidence for staff to factor into their analysis; and the June 12th 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.”

June 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included the following: the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer,

Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: June 23, 2020

APPEARING IN FAVOR: Brian Baughman 125 Hillside Dr. Greenville, SC.

APPEARING IN OPPOSITION: None

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 190-044, **hold** this matter under advisement until **August 18, 2020**.

SECONDED: Narey

AYES: 5 – Gambow, Adams, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-061(OA)

BUILDING OFFICIAL’S REPORT: Application of J. Antony Sisk represented by Jeff Baron for a variance to the landscape regulations, for a special exception to the fence height regulations, and for a special exception to the fence standard regulations at 6611 Country Club Cir. This property is more fully described as Lot 6 in Block M/2798 and is zoned Conservation District No. 2 (Tract 3), 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, and requires mandatory landscaping. The applicant proposes to construct a 10-foot six-inch high fence in a required front yard, which will require a six-foot six-inch special exception to the fence regulations, and to construct a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, which will require a special exception to the fence regulations, and to provide an alternate landscape plan, which will require a variance to the landscape regulations.

LOCATION: 6611 Country Club Circle

**APPLICANT: J. Antony Sisk and Associates
represented by Jeff Baron**

REQUEST:

The following requests have been made on a site that is being developed with a single-family home:

1. A request for a variance to the landscape regulations is made to construct and maintain a fence in one of the site's two required front yards (Gaston Avenue) – Conservation District No. 2 landscaping provisions prohibit fences and walls in the front yard.
2. A special exception to the fence standards relating to placing the aforementioned fence, a three-foot to nine-foot-high solid wood and brick fence, an eight-and-one-half-foot brick retaining wall, and an eight-and-a-half-foot brick fence with a 10-foot six-inch pedestrian gate, in one of the site's two front yards (Gaston Avenue);
3. A special exception to the fence standards related to fence panel materials/location from the front lot line is made to maintain the aforementioned fence with panels with surface areas that are less than 50 percent open located less than five feet from the Gaston Avenue front lot line.

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:

Staff recommends approval, subject to the following condition:

- Compliance with the submitted site plan is required

Rationale:

- Staff concluded that two front yard setbacks along Gaston Avenue and County Club Circle, a slight slope, a need to create a safe area for children and animals, and a comparison table showing a fencible percentage of total fence area sufficiently proves that the subject site cannot be developed in a manner commensurate with the development upon other parcels. Granting this variance to allow the fence in the front yard would permit the applicant to use

the property similarly to other properties within CD No. 2 and will not relieve a self-created or personal hardship.

STAFF RECOMMENDATION (fence standards):

No staff recommendations are made on these or any requests for a special exception to the fence standards since the basis for this type of appeals is when in the opinion of the board, the special exceptions will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

- Site: CD No. 2 (Conservation District)
- North: CD No. 2 (Conservation District)
- South: CD No. 2 (Conservation District)
- East: CD No. 2 (Conservation District)
- West: PD No. 517 (Plan Development District)

Land Use:

The subject site is undeveloped. The areas to the north, south, and east are developed with residential uses, and the area to the west is developed with a golf course.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

GENERAL FACTS/STAFF ANALYSIS:

This request for a variance to the landscape regulations focuses on constructing and maintaining a fence in one of the site's two required front yards (Gaston Avenue) – a three-foot to nine-foot-high solid wood and brick fence, an eight-and-one-half-foot brick retaining wall, and an eight-and-a-half-foot brick fence with a 10-foot six-inch pedestrian gate. However, Conservation District No. 2 landscaping provisions prohibit fences and walls in the front yard; therefore, a variance to the landscape provision to allow the proposed fence as described, is requested.

CD No. 2 (Tract 3) landscaping refers back to Article X which allows special exceptions. However, the additional landscape requirements relating to the fence and walls being prohibited in CD No. 2 are not found in Article X and require a landscape variance instead. The City of Dallas Chief Arborist will not submit a memo regarding the applicant's request since staff determined the a variance to the landscape regulations is only to address the fence in one of the site's two required front yards (Gaston Avenue). Additionally, the fencing standards for the site refer back to Chapter 51A 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; therefore, the proposed fence will require a six-foot six-inch special exception to the fence regulations, and a special exception to the fence regulations.

According to DCAD records, property addressed at 6611 Country Club Circle has no improvements. The property is a 26,967-square-foot vacant lot. The minimum lot size is 10,000 square feet in CD No. 2 (Tract 3).

The submitted site plan/elevation denote – a three-foot to nine-foot-high solid wood and brick fence, an eight-and-one-half-foot brick retaining wall, and an eight-and-a-half-foot brick fence with a 10-foot six-inch pedestrian gate. Portions of the fence panels have surface areas that are less than 50 percent open and located less than five feet from the Gaston Avenue front lot line.

The submitted revised site plan shows a fence that runs approximately 145 feet-in-length parallel to Gaston Avenue, 60 feet perpendicular to Gaston Avenue on the northwest and northeast side of the site, and is located at the front property line, or 12 feet from the pavement line.

The subject site has a slight slope, is irregular in shape, and, according to the application, is 0.6 acres (or approximately 27,000 square feet) in area. While this is not technically a restrictive lot size, the other elements coupled with the double front yard setback requirement limit the usable yard space for possible fencing and privacy.

Staff conducted a field visit of the site and surrounding area and noted no other fences in the required front yard (the adjacent vacant lot has a fence that is located in the required front yard that is equal or less than four feet tall).

The applicant has the burden of proof in establishing the following relating to the variance request:

- That granting the variance to the landscape 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 CD No 2 (Tract 3) 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 CD No 2 (Tract 3) zoning classification.

Additionally, the applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the prohibited fence and to location and materials on Gaston Avenue will not adversely affect neighboring property.

If the board were to grant the variance and special exceptions to allow the fence in the front yard and impose the submitted site plan/elevation as a condition, the fence(s) in the front yard setback would be limited to what is shown on this document– which in this case is a three-foot to nine-foot-high solid wood and brick fence, an eight-and-one-half-foot brick retaining wall, and an eight-and-a-half-foot brick fence with a 10-foot six-inch pedestrian gate, located in portions of the front yard and along the front lot line on Gaston Avenue.

As of June 12, 2020, no letters have been submitted in support or in opposition to the request.

Timeline:

March 13, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 13, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

June 4, 2020: The Board of Adjustment Chief Planner/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 June 5th deadline to submit additional evidence for staff to factor into their analysis; and the June 12, 2020 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.”

June 5, 2020: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment A).

June 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Senior Engineer, the Board of Adjustment Senior Planner the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the board.

June 8, 2020: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment B).

June 12, 2020: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment C).

BOARD OF ADJUSTMENT ACTION: June 23, 2020

APPEARING IN FAVOR: Jeff Baron 2301 Brendenwood Dr. Dallas, TX.
Tony Sisk 6435 Malcolm Dr. Dallas, TX.

APPEARING IN OPPOSITION: Karo Johnson 6616 Gaston Ave. Dallas, TX.
Trisha Seidel 6641 Gaston Ave. Dallas, TX.
Vickers Cunningham 6647 Gaston Ave. Dallas, TX.
Marcia Schneider 6637 Gaston Ave. Dallas, TX.

MOTION#1: Halcomb

To deny the applicant's request:

I move that the Board of Adjustment, in Appeal No. BDA 190-061, on application of J. Anthony Sisk, represented by Jeff Baron, **deny** the variance to the landscape regulations to allow a fence in the front yard as 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: Adams

AYES: 0 –

NAYS: 5 -- Gambow, Adams, Lamb, Halcomb, Narey

MOTION FAILED: 5 – 0 (unanimously)

MOTION#2: Lamb

This motion prevails.

To hold matter under advisement:

I move that the Board of Adjustment, in Appeal No. BDA 190-061, hold this matter under advisement until August 18, 2020.

SECONDED: Halcomb

AYES: 5 -- Gambow, Adams, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-043(OA)

BUILDING OFFICIAL'S REPORT: Application of Mark Brinkerhoff for a special exception to the single family use regulations and to provide an additional electrical meter at 6833 Prosper Street. This property is more fully described as Lot 8, Block C/5048 and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one and requires that single family dwelling use in a single family, duplex, or townhouse may be supplied by not more than one electrical utility service and metered by no more than one electrical meter. The applicant proposes to construct and/or maintain an accessory dwelling unit for rent, which will require a special exception to the single family use regulations and to add an additional electrical utility service and metered, which will require a special exception to the single family zoning regulations.

LOCATION: 6833 Prosper Street

APPLICANT: Mark Brinkerhoff

REQUEST:

The following requests have been made on a site that is being developed with a single-family home:

1. A request for a special exception to the single-family use regulations is made to construct and maintain a two-story accessory dwelling unit structure for rent on a site developed with a two-story single-family structure.
2. A request to install and maintain an additional electrical utility service and electrical meter on a site that is currently developed with a single-family use

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

The board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize a rentable accessory dwelling unit on a lot when, in the opinion of the board, the accessory dwelling unit will not adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to:

1. deed restrict the subject property to require owner-occupancy on the premises; and,
2. annually register the rental property with the city's single-family non-owner-occupied rental program.

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

The board may grant a special exception to authorize more than one electrical utility service or more than one electrical meter for a single family use on a lot in a single family zoning, duplex, or townhouse district when, in the opinion of the board, the special exception will:

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

STAFF RECOMMENDATION ACCESSORY DWELLING UNIT:

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

STAFF RECOMMENDATION ADDITIONAL ELECTRICAL METER:

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

BACKGROUND INFORMATION:

Zoning:

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

Zoning/BDA History:

There have been no related board or zoning cases near the subject site within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

This request for a special exception to the single-family use regulations focuses on constructing and maintaining a two-story additional dwelling unit and installing and maintaining a second electrical utility service and electrical meter on a site that is currently developed a two-story single-family structure.

The site is zoned an R-7.5(A) Single Family District where the Dallas Development Code permits one dwelling unit per lot.

The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot and that the Board of Adjustment may grant a special exception to this provision and authorize a rentable accessory dwelling unit on a lot when, in the opinion of the board, the accessory dwelling unit will not adversely affect neighboring properties.

In addition, the Dallas Development Code states that in a single family, duplex, or townhouse district, a lot for a single family use may be supplied by not more than one electrical service, and metered by not more than one electrical meter; and that the Board of Adjustment may grant a special exception to authorize more than one electrical utility service or more than one electrical meter for a single family use on a lot in a single family zoning district when in the opinion of the board, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district

The Dallas Development Code states that *single family* means one dwelling unit located on a lot and that a *dwelling unit* means one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens⁵, one or more bathrooms⁶, and one or more bedrooms⁷.

The submitted site plan denotes the locations of two building footprints, the larger of the two with what appears to be the existing single family main structure and the smaller of the two denoted as a “new two-story guest house with two-car garage”.

⁵ KITCHEN means any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities. Reference §51A-2.102(57.1) of the Dallas Development Code, as amended.

⁶ BATHROOM means any room used for personal hygiene and containing a shower or bathtub or containing a toilet and sink. Reference §51A-2.102(8.1) of the Dallas Development Code, as amended.

⁷ BEDROOM means any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sunrooms, and other similar rooms are considered bedrooms. Reference §51A-2.102(9) of the Dallas Development Code, as amended.

These requests center on the function of what is proposed to be inside the smaller structure on the site – the accessory dwelling unit--specifically its collection of rooms/features shown on the floor plan. The site plan that does not indicate the location of the two electrical meters on the subject site.

According to DCAD records and the submitted site plan, the “main improvement” for the property at 6833 Prosper Street is a structure built in 2015 with 2,012 square feet of total living area with no additional improvements. Furthermore, the site plan indicates the proposed accessory dwelling unit contains 400 square feet of living area.

The applicant has the burden of proof in establishing that the accessory dwelling unit will not adversely affect neighboring properties. In addition, the applicant has the burden of proof in establishing that the additional electrical meter to be installed on the site will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and, 3) not be used to conduct a use not permitted in the zoning district.

If the board were to approve this request, the board may choose to impose a condition that the applicant complies with the site plan if they feel it is necessary to ensure that the special exception will not adversely affect neighboring properties. However, granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements).

The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant deed restrict the subject property to require owner-occupancy on the premises and to annually register the rental property with the city’s single family non-owner occupied rental program.

Timeline:

February 5, 2020: 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 17, 2020: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel A.

March 23, 2020: The Sustainable Development and Construction Department Senior Planner emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 28th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th deadline to submit additional evidence to be incorporated into the board’s docket materials;

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

April 2, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the public hearings. Review team members in attendance included the following: Board of Adjustment Chief Planner/Board Administrator, Building Inspection Senior Plans Examiner, Senior Engineer, Board of Adjustment Senior Planner, and Assistant City Attorney to the Board.

May 19, 2020: The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action on this application request until the next public hearing to be held on June 23, 2019 to give the applicant the opportunity to provide support for this request.

May 21, 2020: The Board Administrator wrote the applicant a letter of the board's action; the June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12th deadline to submit additional evidence to be incorporated into the Board's docket materials.

June 3, 2020: The applicant provided a letter of support as requested by the Board Members during the May 19 public hearing (see Attachment A).

BOARD OF ADJUSTMENT ACTION: May 19, 2020

APPEARING IN FAVOR: Mark Brinkerhoff 6833 Prosper St. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: **Lamb**

I move that the Board of Adjustment in request No. BDA 190-043, **hold** this matter under advisement until June 23, 2020.

SECONDED: **Gambow**

AYES: 5 – Gambow, Adams, Lamb, Halcomb, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: June 23, 2020

APPEARING IN FAVOR: Mark Brinkerhoff 6833 Prosper St. Dallas, TX.
(unavailable)

APPEARING IN OPPOSITION: None

MOTION: Lamb

I move that the Board of Adjustment in request No. BDA 190-043, **hold** this matter under advisement until **August 18, 2020**.

SECONDED: Halcomb

AYES: 5 – Gambow, Adams, Lamb, Halcomb, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-046(OA)

BUILDING OFFICIAL’S REPORT: Application of Verizon Wireless, represented by Vincent G. Huebinger, for a variance to the side yard (tower spacing) setback regulations at 7817 Forest Lane. This property is more fully described as Lot 1, Block A/7740, and is zoned an MU-3 Mixed Use District, which requires a side yard setback of 30 feet for tower spacing. The applicant proposes to construct and/or maintain a structure and provide a 15-foot side yard setback, which will require a 15-foot variance to the side yard (tower spacing) setback regulations.

LOCATION: 7817 Forest Lane

APPLICANT: Verizon Wireless
Represented by Vincent G. Huebinger

REQUEST:

A request for a variance to the “tower spacing” side yard setback regulations of 15 feet is made to construct and maintain a 125-foot-high cellular communications tower “structure” 15 feet from the site’s eastern side property line or 15 feet into the 30-foot side yard setback on a site developed with a commercial use.

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:

Approval, subject to the following condition:

- Compliance with the submitted site plan/elevation is required.

Rationale:

- Staff concluded that this request should be granted because the width of the subject site where the proposed 125-foot-high cellular communications tower “structure” is to be located is narrow, at 57 feet, and the height of this structure requires a 30-foot side yard (tower spacing) setback.
- Staff concluded that granting this variance would not be contrary to public interest in that if the board were to grant this request and impose the submitted site plan/elevation as a condition, the side yard (tower spacing) encroachment would be limited to that what is shown on this document a 125-foot-high cellular communications tower “structure” located 15 feet from the site’s eastern side property line or 15 feet into this 30-foot side yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use District)
North: MU-3 (Mixed Use District)
East: MU-3 (Mixed Use District)
South: MU-1 (Mixed Use District)
West: MU-3 (Mixed Use District)

Land Use:

The subject site is developed with a commercial use. The areas to the north, east, south, and west are developed with a mix of residential and nonresidential uses.

Zoning/BDA History:

1. BDA189-124, Property located at 7817 Forest Lane (the subject site) The Board of Adjustment Panel A, at its public hearing held on Tuesday, January 21, 2020, denied your request for a request for the eight-foot variance to the side yard setback regulations for tower spacing without prejudice. The case report stated that the request was made to maintain a construct and maintain a five-foot wide, 125-foot-

high cellular communications tower “structure” located 22 feet from the site’s eastern side property line or eight feet into this 30-foot side yard setback on a site developed with a commercial use.

GENERAL FACTS /STAFF ANALYSIS:

This request for a variance to the side yard setback regulations of 15 feet focuses on constructing and maintaining a 125-foot-high cellular communications tower “structure” located 15 feet from the site’s eastern side property line or 15 feet into this 30-foot side yard setback, as confirmed by the submitted site/elevation plan. The property is developed with a commercial use.

The property is zoned an MU-3 Mixed Use District which requires no minimum side and rear yard except when adjacent to or directly across an alley from residential district, a 20-foot setback is required.

Additionally, tower spacing, an additional side and rear yard setback of one-foot for each two feet-in-height above 45 feet is required for that portion of a structure above 45 feet-in-height, up to a total setback of 30 feet.

According to DCAD records, the “main improvement” listed for property addressed at 7817 Forest Lane is an “automotive service” structure built in 2016 with 1,082 square feet of total area.

The subject site contains 0.46 acres, is flat, and slightly irregular in shape (approximately 59 feet wide to the north, 80 feet wide to the south, 329 feet long to the east, and 318 feet long to the west). The lot is 57 feet wide where the monopole is proposed.

As of May 14, 2020, no letters have been submitted in support or in opposition of the request.

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

1. 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.
2. 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 MU-3 zoning classification.
3. 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 MU-3 zoning classification.

If the Board were to grant the variance request and impose the submitted site/elevation plan as a condition, the structure in the side yard setback would be limited to what is shown on this document which in this case is a 125-foot-high cellular communications tower “structure” located 15 feet from the site’s eastern side property line or 15 feet into this 30-foot side yard setback.

Timeline:

March 18, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

April 6, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.

April 17, 2020: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s 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 April 30th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th 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.”

April 30, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the following: the Assistant Director of Sustainable Development and Construction Current Planning Division, the Assistant Director of Sustainable Development and Construction Engineering Division, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building

Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, Sustainable Development and Construction Department Board of Adjustment Senior Planners, and the Assistant City Attorney to the Board.

No review comment sheets were submitted in conjunction with this application.

May 19, 2020: The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action on this application per applicant's request until the next public hearing to be held on June 23, 2019.

May 21, 2020: The Board Administrator wrote the applicant a letter of the board's action; the June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12th deadline to submit additional evidence to be incorporated into the Board's docket materials.

BOARD OF ADJUSTMENT ACTION: May 19, 2020

APPEARING IN FAVOR: Vincent Huebinger 1715 Capital TX Hwy. Austin, TX.

APPEARING IN OPPOSITION: None

MOTION: **Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 190-046, **hold** this matter under advisement until June 23, 2020.

SECONDED: **Adams**

AYES: 5 – Gambow, Adams, Lamb, Halcomb, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: June 23, 2020

APPEARING IN FAVOR: Vincent Huebinger 1715 Capital TX Hwy. Austin, TX.

Raul Ramos-Quintana 600 Hidden Ridge #400 Irving, TX.

Lucas Conder 347 Clemens Ave. New Braunfels, TX.

APPEARING IN OPPOSITION: None

MOTION: **Halcomb**

I move that the Board of Adjustment, in Appeal No. BDA 190-046, on application of Verizon Wireless, represented by Vincent Huebinger, **grant** the 15-foot variance to the side yard setback regulations for tower spacing 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/elevation plan is required.

SECONDED: Lamb

AYES: 4 – Adams, Lamb, Halcomb, Narey

NAYS: 1-- Gambow

MOTION PASSED: 4 – 1

.....
2:54 P.M. First Recess

2:59 P.M. Resumed

4:55 P.M. Second Recess

5:01 P.M. Resumed

5:46 P.M. Board Meeting adjourned for June 23, 2020.

Cheri Gambow

CHAIRPERSON
Jennifer Munoz

BOARD ADMINISTRATOR
[Signature]

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.