

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
MONDAY, SEPTEMBER 21, 2020**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Robert Agnich, regular member, Judy Pollock, regular member, and John Jones, alternate member

MEMBERS ABSENT FROM BRIEFING: Moises Medina, regular member, and Roger Sashington, regular member

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Robert Agnich, regular member, Judy Pollock, regular member, and John Jones, alternate member

MEMBERS ABSENT FROM HEARING: Moises Medina, regular member, and Roger Sashington, regular member

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Anna Holmes, Asst. City Attorney, Oscar Aguilera, Senior Planner, David Nevarez, Senior Engineer, Robyn Gerard, Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, Neva Dean, Assistant Director, Kris Sweckard, Director.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Anna Holmes, Asst. City Attorney, Oscar Aguilera, Senior Planner, David Nevarez, Senior Engineer, Robyn Gerard, Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, Neva Dean, Assistant Director, Kris Sweckard, Director.

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, **September 21, 2020 docket.**

BOARD OF ADJUSTMENT ACTION: September 21, 2020

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 C, August 17, 2020 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: September 21, 2020

MOTION: Pollock

Approval of the Board of Adjustment Panel C, August 17, 2020 public hearing minutes.

SECONDED: Hounsel

AYES: 4 – Hounsel, Agnich, Pollock, Jones

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-079(OA)

BUILDING OFFICIAL’S REPORT: Application of Karl Crawley for a special exception to the fence height regulations, and for a special exception to the visibility obstruction regulations at 4651 Catina Lane. This property is more fully described as Lot 3A, Block B/5534, and is zoned an R-1 ac(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct a seven-foot-high fence in a required front yard, which will require a three-foot special exception to the fence regulations, and to construct a single family residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulations.

LOCATION: 4651 Catina Lane

APPLICANT: Karl Crawley

REQUESTS:

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 fence standards regulations related to the fence height of three feet is made to construct and maintain a six-foot six-inch iron fence with seven-foot stone columns and a six-foot six-inch iron gate in the required front yard.
2. A request for special exceptions to the visual obstruction regulations is made to locate and maintain portions of the aforementioned fence with stone columns and an iron gate in the two 20-foot visibility triangles on both sides of the drive approach at the intersection with Catina Lane.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d) (3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION (fence standards regulations):

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.

STAFF RECOMMENDATION (visual obstruction regulations):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the request.
- Staff concluded that the request for special exceptions to the visual obstruction regulations should be granted with the suggested conditions imposed because the item located in the visibility triangles does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: R- 1 ac (A) (Single family district)

North: R- 1 ac (A) (Single family district)

East: R- 1 ac (A) (Single family district)

South: R- 1 ac (A) (Single family district)

West: R- 1 ac (A) (Single family district)

Land Use:

The subject site is being 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. BDA189-141, Property located at 4610 Catina Lane (the lot located at the southeast corner of Catina Lane and Welsh Road)

The Board of Adjustment Panel C, at its public hearing held on Monday, June 22, 2020 approved a request for a special exception to the fence height regulations of four-feet six-inches and imposed the submitted site plan and elevation as a condition.

The case report stated that the request was made to construct a fence with a maximum height of four-feet six-inches high with metal on the top and a stone base, and partly an eight-foot-high stone fence, eight-foot six-inch and five-foot stone columns, and two seven-foot six-inch gates in the required 40-foot front yard on Catina Lane on a site being developed with a single-family home
2. BDA189-141, Property located at 4610 Catina Lane (the lot located at the southeast corner of Catina Lane and Welsh Road))

The Board of Adjustment Panel C, at its public hearing held on Monday, December 16, 2019, denied a request for a special exception to the fence height regulations of feet seven inches without prejudice.

The case report stated that the request was made to construct a fence with a maximum height of seven feet seven inches in the required 40-foot front yard on Catina Lane on a site being developed with a single-family home.
3. BDA112-039, Property located at 10757 Lennox Lane (the lot at the South corner of Royal Lane and Lennox Lane)

On May 14, 2012, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of three feet and imposed the submitted site plan and elevation as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a solid stucco wall ranging in height from six-feet four-inches to six-feet eight-inches (given grade changes on the property) with seven-foot-high stucco columns in the site's Royal Lane 40-foot front yard setback on a site that is developed with a single-family home.
4. BDA978-231, Property located at 10757 Lennox Lane (the lot at the South corner of Royal Lane and Lennox Lane)

On October 19, 1998, the Board of Adjustment Panel C denied requests for special exceptions to the fence height and visual obstruction regulations without prejudice. The case report stated that the requests were made to construct and maintain an eight-foot-high solid masonry wall in the

front yard setback and in the required 45-foot visibility triangle at Royal Lane and Lennox Lane.

5. BDA 045-172, Property at 4610 Royal Lane (two lots north of the subject site) On May 18, 2005, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of seven feet imposing the following condition: Compliance with the newly submitted "Preliminary Concept Plan/Site Plan and Elevation" dated May 18, 2005, is required. The case report stated that the request was made in conjunction with constructing a wall in the 40-foot Royal Lane front yard setback on a site developed with a single-family home.

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

The purpose of this request for a special exception to the fence height standards is to construct and maintain a six-foot six-inch iron fence with seven-foot stone columns and a six-foot six-inch iron gate in the required front yard along Catina Lane.

The proposed fence is to be located about one foot-from the front property line. The following additional information was gleaned from the submitted site plan:

- The proposed fence is approximately 165 feet-in-length parallel to Catina Lane and runs approximately 40 feet perpendicular to Catina Lane on both side property lines in the required front yard.
- The minimum distance between the proposed fence and the pavement line is approximately 11 feet.

Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The subject site is zoned R-1ac(A) which requires a 40-foot front yard setback.

Staff conducted a field visit of the site and surrounding area and noted several other fences along Catina Lane and Lennox Lane located in front yard setback which appeared to be above four feet-in-height along Catina Lane and Lennox Lane located in the front yard setback, some of which have recorded BDA history (see the Zoning/BDA History section of this case report for details).

As of September 11, 2020, no letters have been received in opposition or support to this request.

The applicant has the burden of proof in establishing that the special exception to the fence height regulation of three feet will not adversely affect neighboring property.

Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding four feet-in-height in the front yard setback to be constructed in the location and heights as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

The requests for special exceptions to the fence standards regulations on a site developed with a single family home focus on constructing and maintaining portions of a six-foot six-inch iron fence with seven-foot stone columns and a six-foot six-inch iron gate in the two 20-foot visibility triangles on both sides of the drive approach at the intersection with Catina Lane.

Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and at alleys on properties zoned single-family); and
- between two-and-a-half and eight feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The property is located in an R-1ac(A) Single Family District which requires the portion of a lot with a triangular area formed by connecting the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.

A site plan and elevation have been submitted indicating portions of a six-foot six-inch iron fence with seven-foot stone columns and a six-foot six-inch iron gate will be located in the 20-foot visibility triangle on both sides of the driveway that intersects with Catina Lane.

The Sustainable Development Department Senior Engineer has no objections to the requests.

The applicant has the burden of proof in establishing how granting this request to maintain the proposed items in the two 20-foot visibility triangles on both sides of the driveway that intersect with Catina Lane does not constitute a traffic hazard.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items in the two 20-foot visibility triangles formed on each side of the driveway that intersects with Catina Lane to that what is shown on these documents, portions of a six-foot six-inch iron fence with seven-foot stone columns and a six-foot six-inch iron gate located within the two 20-foot visibility triangles on both sides of the drive approach at the intersection with Catina Lane.

Timeline:

- July 24, 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.
- August 18, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- August 19, 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; the September 2, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the September 11, 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."

September 4, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Sing Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

September 4, 2020: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

BOARD OF ADJUSTMENT ACTION: September 21, 2020

APPEARING IN FAVOR: Karl Crawley 2201 Main St. #1280 Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Agnich

I move that the Board of Adjustment in Appeal No. BDA 190-079 **hold** this matter under advisement until **October 19, 2020**.

SECONDED: Hounsel

AYES: 4 – Hounsel, Agnich, Pollock, Jones

NAYS: 0 –

MOTION PASSED: 4-0 (unanimously)

(Motion 1st: Deny w/o prej- Withdrawn)

FILE NUMBER: BDA190-081(OA)

BUILDING OFFICIAL'S REPORT: Application of Omar Elkady for a special exception to the single family regulations, and provide an additional electrical meter at 6738 Briar Cove Dr. This property is more fully described as Lot 14, Block C/8183, and is zoned an R-16(A) Single Family District, which limits the number of dwelling units to one and requires that a single family dwelling use in a single family, duplex, or townhouse district may be supplied by not more than one electrical utility service, and metered by not more than one electrical meter. The applicant proposes to construct an additional dwelling unit, which will require a special exception to the single family zoning use regulations, and to construct a single family dwelling in a single family, duplex, or townhouse district and have more than one electrical utility service, or more than one electrical meter, which will require a special exception to the single family zoning use regulations.

LOCATION: 6738 Briar Cove Dr

APPLICANT: Omar Elkady

REQUEST:

The following requests have been made:

3. A request for a special exception to the single family use regulations is made to construct and maintain a one-story additional dwelling unit structure on a site developed with a one-story single family structure.
4. 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 ADDITIONAL DWELLING UNIT:

The board may grant a special exception to the single family use regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: (1) be used as rental accommodations; or, (2) adversely affect neighboring properties.

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

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 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 for ADU and Additional Electrical Meter:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

- Site:** R-16(A) (Single Family District)
- North:** R-16(A) (Single Family District)
- East:** R-16(A) (Single Family District)
- South:** R-16(A) (Single Family District)
- West:** R-16(A) (Single Family District)

Land Use:

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

Zoning/BDA History:

There have not been any recent related board or zoning cases recorded either on or near the subject site.

GENERAL FACTS/STAFF ANALYSIS for ADU and Additional Meter:

This request for a special exception to the single-family use regulations focuses on:

1. Constructing and maintaining a one-story additional dwelling unit structure on a site developed with a one-story single-family structure.
2. Installing and maintaining an additional electrical utility service and electrical meter on a site that is currently developed with a single-family use.

The site is zoned an R-16(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 an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: (1) be used as a rental accommodation; or (2) adversely affect neighboring properties.

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

The Dallas Development Code defines:

- a “single family” use as “one dwelling unit located on a lot,” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- a “kitchen” as “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.”
- a “bathroom” as “any room used for personal hygiene and containing a shower or bathtub or containing a toilet and sink.”
- a “bedroom” as “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.”

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 “pool house”.

This request centers on the function of what is proposed to be inside the smaller structure on the site – the “pool house” structure, specifically its collection of rooms/features shown on the floor plan. The site plan does not indicate the location of the two electrical meters on the subject site.

According to DCAD records, the “main improvement” for the property at 6738 Briar Cove Dr. is a structure built in 1963 with 3,093 square feet of total living area with the following “additional improvements”: a 550-square-foot detached garage, a 452-square-foot detached carport, a 624-square-foot detached quarter and a pool.

According to the submitted site plan the main structure contains 3,136 square feet of total living area and the proposed additional dwelling unit contains 881 square feet of living area.

The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.

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

As of September 11, 2020, no letters have been submitted in support of or in opposition to the request.

If the board were to approve the request for an additional dwelling unit, 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. Furthermore, the Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations. However, granting 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).

If the board were to approve this request to install and maintain a second electrical utility service/electrical meter, this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing a second electrical utility service/electrical meter on the site (i.e. development on the site must meet all required code requirements).

Timeline:

- July 24, 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.
- August 18, 2020: The Board of Adjustment Secretary assigned this case to the Board of Adjustment Panel C.
- August 19, 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; the September 2, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the September 11, 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.”

September 4, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Sing Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: September 21, 2020

APPEARING IN FAVOR:

Omar Elkady 6738 Briar Cove Dr. Dallas, TX
Shereen El Domeiri 6738 Briar Cove Dr. Dallas, TX

APPEARING IN OPPOSITION:

Peter D’Apice 13632 Ashridge Dr. Dallas, TX.
Bill Naifeh 6927 Alpha Rd. Dallas, TX.

MOTION#1: Agnich

I move that the Board of Adjustment, in request No. BDA 190-081 on application of Omar Elkady, **grant** the request to construct and/or maintain an additional dwelling unit on a site developed with a single family structure and use as a special exception to the single family regulations requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not be used as rental accommodations, and will not adversely affect neighboring properties.

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

The applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

SECONDED: Pollock

AYES: 4 - Agnich, Pollock, Jones, Hounsel

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION#2: Jones

I move that the Board of Adjustment, in Appeal No. 190-081, on application of Omar Elkady, **deny** the special exception to install and/or maintain an additional electric meter on the property as requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would be contrary to the public interest;

(**and/or**) would adversely affect neighboring property; (**and/or**) the additional meter would be used to conduct a use not permitted in the district where the building site is located.

SECONDED: Hounsel

AYES: 4 - Agnich, Pollock, Jones, Hounsel

NAYS: 0 - Pollock

MOTION PASSED: 4 – 0 (unanimously)

(Motion #2- 1st: Deny w/o prej- Failed)

(Motion #2- 2nd: Grant – Failed)

(Motion #2- 3rd: to reconsider the motion to deny without prej)

FILE NUMBER: BDA190-086(OA)

BUILDING OFFICIAL’S REPORT: Application of Clegg Wellborn for a variance to the front yard setback regulations at 1920 JB Jackson Jr. Boulevard. This property is more fully described as Lot 12, Block 12/1547, and is zoned Planned Development District No. 595, MF-2(A) Multifamily District, which requires a front yard setback of 15 feet. The applicant proposes to construct a single-family structure and provide a 10-foot front yard setback, which will require a five-foot variance to the front yard setback regulations.

LOCATION: 1920 JB Jackson Jr. Boulevard

APPLICANT: Clegg Wellborn

REQUESTS:

A request for a variance to the front yard setback regulations of five feet is made to construct and maintain a 900-square-foot, one-story, single family structure—part of which is to be located 10 feet from one of the site’s three front property lines (Carl Street) or five feet into this 15-foot front yard setback, on a site that is undeveloped.

STANDARD FOR A VARIANCE:

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

- not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

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

STAFF RECOMMENDATION (front yard):

Approval, subject to the following condition:

Compliance with the submitted site plan is required.

- Rationale:

Staff concluded that the subject site is unique and different from most lots in the PD No. 595 MF-2(A) District by its restrictive area due to having a smaller lot, 6,894 square feet. In addition, the applicant provided a comparable table that stated that most lots in this PD No. 595 MF-2(A) zoning district average 6,930square feet in size. In addition, the lot has three front yards which reduces the developable area. These conditions prevent the lot from being developed in a manner commensurate with the development upon other parcels of land with the same zoning district.

The applicant submitted a document (Attachment A) indicating, among other things, that the proposed single family structure on the subject site is commensurate to 24 other lots located within the same subdivision and in the same PD No. 595 MF-2(A) District.

BACKGROUND INFORMATION:

Zoning:

Site: PD 595 (MF-2(A)) (Planned Development) (Multi-family)
North: PD 595 (MF-2(A)) (Planned Development) (Multi-family)
South: PD 595 (MF-2(A)) (Planned Development) (Multi-family)
East: PD 595 (MF-2(A)) (Planned Development) (Multi-family)
West: PD 595 (MF-2(A)) (Planned Development) (Multi-family)

Land Use:

The subject site is undeveloped. The areas to the north, south, east and west are developed with single family uses or undeveloped/vacant lots.

GENERAL FACTS /STAFF ANALYSIS:

The purpose of this request for a variance to the front yard setback regulations of 15 feet is to construct and maintain a 900-square-foot, one-story, single family structure, part of which is to be located 10 feet from one of the site’s three front property lines (Carl Street) or five feet into this 15-foot front yard setback on a site that is undeveloped.

The property is located in PD No. 595 MF-2(A) Multifamily District which requires a minimum front yard setback of 15 feet. The property is currently vacant.

The subject site is rectangular and flat. According to the applicant's representative the property is a smaller lot, approximately 6,894 square feet in area. The applicant provided a comparable table showing that the average lot is 6,930 square feet within this zoning district.

Furthermore, the evidence submitted indicates that the total home size of the proposed main structure on the subject site will be approximately 900 square feet and that the proposed structure on the subject site is commensurate to 24 other lots located within the same subdivision and in the same zoning district.

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

- (A) 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.
- (B) 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 PD No. 595 MF-2(A) zoning district.
- (C) 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 PD No. 595 MF-2(A) zoning district.

If the board were to grant the variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document— which in this case an 900-square-foot, one-story, single family structure, part of which is to be located 10 feet from the site's front property line or five feet into this 15-foot front yard setback.

Timeline:

- July 29, 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.
- August 18, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- August 19, 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; the September 2, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the September 11, 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.”

September 3, 2020: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

September 4, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Sing Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: September 21, 2020

APPEARING IN FAVOR: Daniel Zarate 14643 Dallas Pkwy. #1050 Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION#1: Hounsel

I move that the Board of Adjustment, in Appeal No. BDA 190-086, on application of Clegg Wellborn **grant** the variance to the front yard setback regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Jones

AYES: 4 - Agnich, Pollock, Hounsel, Jones

NAYS: 0

MOTION PASSED: 4-0 (unanimously)

FILE NUMBER: BDA190-089(OA)

BUILDING OFFICIAL'S REPORT: Application of Kenneth Zuercher for a special exception to the fence height regulations, and for a special exception to the fence standards regulations at 8810 Boundbrook Avenue. This property is more fully described as Lot 18, Block 21/7522, and is zoned an R-7.5(A) Single Family District, which limits the height of a fence in the front yard to four feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line. The applicant proposes to construct a six-foot-high fence in a required front yard, which will require a two-foot special exception to the fence regulations, and to construct a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, which will require a special exception to the fence regulations.

LOCATION: 8810 Boundbrook Avenue

APPLICANT: Kenneth Zuercher

REQUESTS:

The following requests for special exceptions to the fence standards regulations have been made on a site that is being developed with a single-family home:

1. Related to fence height: a request of two feet is made to construct and maintain a six-foot-high solid wood fence located in one of the site's two front yard setbacks, along Ashcroft Avenue.
2. Related to a fence panels with a surface area that is less than 50 percent open less than five feet from the front lot line: a request is made to construct and maintain the aforementioned six-foot-high solid wood fence along Ashcroft Avenue located less than five feet from this front lot line.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS¹:

The applicant has the burden of proof in establishing the following standard has been met: 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 RECOMMENDATIONS:

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-7.5(A) (Single Family District)

¹ Reference Section 51A-4.602(d)(3) of the Dallas Development Code.

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 undeveloped. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

There have not been any recent related board or zoning cases recorded either on or near the subject site.

GENERAL FACTS/STAFF ANALYSIS

The requests for special exceptions to the fence standards focus on:

1. constructing and maintaining a fence higher than six feet in height in the site's front yards along Ashcroft Avenue – a six-foot-high solid wood fence.
2. constructing and maintaining a fence with panels with surface areas less than 50 percent open along Ashcroft Avenue less than 5' from this front lot line – the aforementioned six-foot-high solid wood fence.

The subject site is zoned an R-7.5(A) Single Family District, which requires a 25-foot front yard. Given the single-family zoning and location of the corner lot subject site, it has two required front yards. However, this site has a 30-foot front yard building line required on the recorded plat along Ashcroft Avenue and Boundbrook Avenue.

The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet-in-height above grade when located in the required front yard and that no fence panel having less than 50 percent open surface area may be located less than five feet from the front lot line.

The submitted site plan/elevation denotes a six-foot-high solid wood fence in the Ashcroft Avenue and Boundbrook Avenue front yard setbacks.

The following additional information was gleaned from the submitted site plan and elevation:

- the proposal is represented as being approximately 95 feet-in-length parallel to the street and approximately 30 feet-in-length perpendicular to the street on the southwest side of the site and located approximately 30 feet from the front property line or approximately 38 feet from the pavement line on the northwest of the site.

The site plan and elevation of the proposal along Ashcroft Avenue with fence panels having a surface area that is less than 50 percent open and located less than five feet from this front lot line – a six-foot-high wood fence approximately 95 feet-in-length parallel to the street.

Staff conducted a field visit of the site and surrounding area and noted several fences that appeared to be above four feet-in-height and located in a front yard setback.

As of September 11, 2020, no letters had been submitted in support or opposition for this request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height above two feet and to location and fence panels with surface areas that are less than 50 percent open will not adversely affect neighboring property.

Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding two feet in height in the front yard setback and with fence panels with surface areas less than 50 percent open located less than five feet from the front lot line to be maintained in the location and of the heights and materials as shown on this document.

TIMELINE:

July 30, 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.

August 18, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

August 19, 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; the September 2, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the September 11, 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.”

August 31, 2020: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

September 4, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of

Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Sing Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: September 21, 2020

APPEARING IN FAVOR: Kenneth Zuercher 8810 Boundbrook Ave, Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Hounsel

I move that the Board of Adjustment, in Appeal No. BDA 190-089, on application of Kenneth Zuercher to construct and/or maintain a six-foot high fence having less than 50 percent open surface area as special exceptions to fence standards regulations contained in the Dallas Development Code, as amended, is **granted**, subject to the following condition:

Compliance with the submitted site plan/elevation is required.

SECONDED: Jones

AYES: 4 – Agnich, Pollock, Jones, Hounsel

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

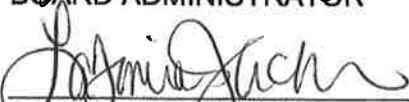
The meeting was adjourned at 2:40 P.M. on September 21, 2020



CHAIRPERSON



BOARD ADMINISTRATOR



BOARD SECRETARY

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