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**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, APRIL 21, 2021**

CITY SECRETARY
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: Michael Schwartz, Chair, Matthew Vermillion regular member, Matt Shouse, regular member, Damian Williams, regular member, Catrina Johnson, regular member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Michael Schwartz, Chair, Matthew Vermillion regular member, Matt Shouse, regular member, Damian Williams, regular member, Catrina Johnson, regular member

MEMBERS ABSENT FROM HEARING: None.

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

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

10:12 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's April 21, 2021 docket.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

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 B, January 20, 2020 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

MOTION: Vermillion

Approval of the Board of Adjustment Panel B, November 18, 2020 public hearing minutes.

SECONDED: Williams

AYES: 5 – Schwartz, Vermillion, Johnson, Shouse, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Approval of the Board of Adjustment 2020 Annual Report

BOARD OF ADJUSTMENT ACTION: April 21, 2021

MOTION: Vermillion

Approval of the Board of Adjustment 2020 Annual Report

SECONDED: Johnson

AYES: 5 – Schwartz, Vermillion, Johnson, Shouse, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-003(OA)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin for a variance to the off-street loading regulations at 18081 Preston Road. This property is more fully described as Lot 2, Block V/8730, and is zoned a CR Community Retail District, which requires off-street loading spaces to be provided. The applicant proposes to construct a general merchandise or food store greater than 3,500 square feet use which requires one loading space. A variance is requested to provide no loading for the proposed use.

LOCATION: 18081 Preston Road

APPLICANT: Rob Baldwin, Baldwin Associates

REQUEST:

A variance to the off-street loading regulations of one loading space is made to construct and maintain a 9,656-square-foot structure with for a general merchandise or food store greater than 3,500 square feet use and provide no loading spaces.

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 is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the CR Community Retail District considering the lot is irregular and of a restrictive lot area with 10,000 square feet so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same CR District.
- The applicant submitted a document (**Attachment A**) indicating, among other things, that the proposed structure on the subject site is commensurate to three other lots located in the same CR District.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail District)
North: Planned Development District No. 222
South: CR (Community Retail District)
East: Planned Development District No. 425
West: CR (Community Retail District)

Land Use:

The subject site is developed with a vacant structure. The area to the north is developed with a surface parking lot; and the areas to east, south, and west are developed with a mix of 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:

Section 51A-4.210(14) of the Dallas Development Code requires one off-street loading space for a general merchandise or food store greater than 3,500 square feet. An additional off-street loading space is required for each additional 60,000 square feet or fraction thereof. The proposed structure for this use contains 9,656 square feet and will require only one loading space—for which a variance is requested.

The property is a corner lot, slightly irregular in shape, and according to the submitted application contains 1.10 acres or approximately 47,916 square feet in lot area. The site is zoned a CR Community Retail District which does not have lot size requirements.

The applicant submitted a document (**Attachment A**) indicating, among other things, that the proposed retail store structure on the subject site is commensurate to three other lots located in the same CR District. The document also shows five other lots located in a different zoning district with an average floor area of 12,845 square feet and an average lot size of 1.417 acreage.

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

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

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

If the board were to grant the variance request and impose the submitted site plan as a condition, the existing structure on the site could be expanded as shown on this plan, up to a 9,656-square-foot structure with a general merchandise or food store greater than 3,500 square feet use with no loading space.

Timeline:

November 11, 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.

January 6, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 8, 2021: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the January 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the February 5, 2021 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.”

January 28, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

January 28, 2021: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

January 29, 2021: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

February 17, 2021: The Board of Adjustment hearing for Panel B on February 17, 2021 was cancelled.

March 17, 2021: The Board of Adjustment hearing for Panel B on March 17, 2021 was cancelled.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

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

APPEARING IN OPPOSITION: None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-003, on application of Rob Baldwin, **grant** the request for a variance to the off-street loading regulations contained in the Dallas Development Code, subject to the following conditions.

Compliance with the submitted site plan is required.

SECONDED: Johnson

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-014(OA)

BUILDING OFFICIAL'S REPORT: Application of Rob Baldwin for a variance to the side yard setback regulations, and for a variance to the maximum allowed lot coverage at 326 N. Moore Street. This property is more fully described as Lot 34, Block 3/7675, and is zoned an R-5(A) Single Family District, which requires 45 percent maximum lot coverage and requires a side yard setback of five feet. The applicant proposes to construct a single-family residential structure and provide a three-foot six-inch side yard setback, which will require a one-foot six-inch variance to the side yard setback regulations, and to construct a single-family residential

structure with 1,688 square feet of floor area, which will require a 14 percent (390-square-foot) variance to the maximum allowed lot coverage of 45 percent.

LOCATION: 326 N. Moore Street

APPLICANT: Rob Baldwin of Baldwin Associates

REQUESTS:

The following requests have been made on an undeveloped site:

1. A variance to the side yard setback regulations is made to construct and maintain a 1,688 square-foot, two-story, single-family structure three-feet six-inches from the side property line (southern) or one-foot six-inches into the five-foot side yard setback; and
2. A variance to the maximum allowed lot coverage of 45 percent is made to construct and maintain a 1,688 square-foot, two-story, single-family structure which will require a 14 percent (390 square feet) variance to the lot coverage regulations .

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 is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-5(A) District considering its restrictive lot area of 3,400 square feet so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-5(A) zoning district.

- The applicant submitted a document (**Attachment A**) indicating, among other things, that the proposed structure on the subject site is commensurate to 63 other lots located in the same R-5(A) District.

BACKGROUND INFORMATION:

Zoning:

Site: R-5(A) (Single family district)
North: R-5(A) (Single family district)
South: CR (Community retail district)
East: R-5(A) (Single family district)
West: R-5(A) (Single family district)

Land Use:

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

Zoning/BDA History:

There have not been any related board or zoning cases recorded either on or near the subject site within the last five years.

GENERAL FACTS /STAFF ANALYSIS:

The requests for variances to the side yard setback requirements and maximum lot coverage regulations focus on constructing and maintaining a 1,688-square-foot, two-story, single-family structure on an undeveloped lot zoned an R-5(A) Single Family District. In this district, a minimum side yard setback of five feet is required. Additionally, the maximum lot coverage is 45 percent.

The submitted site plan indicates that the proposed single-family structure will be located three-foot six-inches from the side property line (southern) or one-foot six-inches into the five-foot side yard setback. The subject site is sloped, virtually rectangular (approximately 113 feet by 29 feet)—but narrow, and according to the submitted site plan 3,400 square feet in area. The site is zoned an R-5(A) District where lots are typically a minimum of 5,000 square feet in area. The subject site is 1,600 square feet smaller than the minimum size requirement.

The submitted site plan also indicates that the proposed 1,688-square-foot, two-story, single-family structure will exceed the allowed floor area by 14 percent (390 square feet) and provide a total of 59 percent lot coverage.

According to DCAD records, there are “no main improvements” or “no additional improvements” for property addressed at 326 N. Moore Street.

The applicant submitted a document (**Attachment A**) indicating, among other things, that the proposed additions on the subject site are commensurate to 63 other lots located in the same R-5(A) District.

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-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-5(A) zoning classification.

If the board were to grant the variance requests and impose the submitted site plan as a condition, the structure would be limited to what is shown on this document– a 1,688-square-foot, two-story, single-family structure located three-feet six-inches from the side property line (southern) or one-foot six-inches into the five-foot side yard setback, providing 59 percent lot coverage, 14 percent higher than the maximum.

Timeline:

December 18, 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.

January 6, 2021: The Board of Adjustment Secretary assigned this case to the Board of Adjustment Panel B.

January 8, 2021: 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 January 26th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th 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.”

January 27, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

February 17, 2021: The Board of Adjustment hearing for Panel B on February 17, 2021 was cancelled.

March 17, 2021: The Board of Adjustment hearing for Panel B on March 17, 2021 was cancelled.

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

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. #B Dallas, TX
Mike King 1500 Marilla #5CN Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-014, application of Rob Baldwin, **grant** the variance to the side yard setback regulations and a variance to the maximum allowed lot coverage regulations in the Dallas Development Code is granted, subject to the following conditions:

Compliance with submitted site plan is required.

SECONDED: Johnson

AYES: 5 - Schwartz, Shouse, Johnson, Williams, Vermillion

NAYS: 0

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA201-017(OA)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin for a special exception to the side yard setback regulations at 523 N. Denley Drive. This property is more fully described as Part of Lot 9, Block 49/3030, and is zoned Subarea 2 within Planned Development District No. 571, which requires a seven-foot seven-inch side yard setback. The applicant proposes to construct a single-family residential structure and provide a three-foot six-inch side yard setback on the south side of the property, which will require a four-foot one-inch variance to the side yard setback regulations, and to provide a two-inch side yard setback on the north side of the property, which will require a seven-foot five-inch variance to the side yard setback regulations.

LOCATION: 523 N. Denley Drive

APPLICANT: Rob Baldwin of Baldwin Associates

REQUESTS:

The following requests have been made to construct and maintain a single-family home on a site that is currently undeveloped:

1. A special exception to the side yard setback regulations of up to four-feet one-inch is made to construct and maintain a 1,831 square-foot, two-story, single-family structure located as close as three-feet six-inches from the south side property line or as much as four-feet one-inch into the required seven-foot seven-inch side yard setback.

2. A special exception to the side yard setback regulations of up to seven-feet five-inches is made to construct and maintain a 441 square-foot garage structure located as close as two inches from the north side property line or as much as seven-feet five-inches into the required seven-foot seven-inch side yard setback.

STANDARD FOR A SPECIAL EXCEPTION TO THE FRONT, SIDE, AND REAR SETBACK REQUIREMENTS:

Section 51(P)-571.109(c) of the Dallas Development Code specifies the board of adjustment may grant a special exception to the front, side, and rear yard setback requirements if the board finds, after a public hearing, that the special exception will not adversely affect the neighboring properties, the improvement is within the general building patterns of the neighborhood, and the special exception will preserve the character of the neighborhood. In granting a special exception to the setback requirements, the board may impose any other reasonable condition that would further the purpose and intent of the setback requirements of this article.

STAFF RECOMMENDATION:

No staff recommendation is made on these or any request for a special exception to the front, side, and rear yard setback requirements if the board finds, after a public hearing, that the special exception will not adversely affect the neighboring properties, the improvement is within the general building patterns of the neighborhood, and the special exception will preserve the character of the neighborhood.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 571 (Subdistrict 2)
North: PD No. 571 (Subdistrict 2)
South: PD No. 571 (Subdistrict 2)
East: PD No. 571 (Subdistrict 2)
West: PD No. 571 (Subdistrict 2)

Land Use:

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

Zoning/BDA History:

1. BDA190-105, Property at 517 N. Denley Avenue (south of the subject property),

On November 18, 2020, the Board of Adjustment Panel B granted requests for a special exception to the front yard setback regulations of two-feet nine-inches and special exceptions to the side yard setback regulations of up to 16-feet two-inches to construct and maintain a 1,624 square-foot two-story single family structure with the condition that the applicant complied with the

submitted site plan.

2. BDA189-115, Property at 429 N. Denley Avenue (south of the subject property),

On October 21, 2019, the Board of Adjustment Panel C granted requests for a variance to the maximum lot coverage regulations and for special exceptions to the front yard and side yard setback requirements with the condition that the applicant complied with the submitted site plan.

GENERAL FACTS/STAFF ANALYSIS (special exceptions):

The requests for special exceptions to the side yard setback requirements focus on constructing and maintaining a 1,831 square-foot two-story single family structure and a 441 square-foot garage structure on a presently undeveloped site. The property is zoned Subdistrict 2 within PD No. 571 which states the following:

- Side and rear yard setback. (1) Except as provided in Subsection (b)(2) below, rear and side yard setbacks must be within five percent of the average side or rear yard setback of other main buildings in the same blockface. In the event the blockface consists of all vacant lots, the lot must be developed in accordance with the side and rear yard setback regulations for a D(A) Duplex District. (2) There is no minimum side yard if the lot is 30 feet or less in width.

The submitted site plan shows a two-story, single-family structure with 1,831 square feet of floor area that is three-feet six-inches from the south side property line, and a 441 square-foot detached garage structure located as close as two inches from the north side property line.

Note that the Building Official's report states that the required side yard setback on this site is seven-feet seven seven-inches; therefore, with a minimum side yard setback provided of three-feet six-inches for the single family structure from the south side property line is for up to four-feet one-inch and a minimum side yard setback provided of two-inches for the garage structure from the north side property line is for up to as seven-feet five-inches.

The applicant has the burden of proof in establishing that the special exceptions will not adversely affect the neighboring properties, that the improvement is within the general building patterns of the neighborhood, and that the special exception will preserve the character of the neighborhood.

If the board were to approve these requests and impose the submitted site plan as a condition, the structures in the side yard setbacks would be limited to what is shown on this document.

Timeline:

December 18, 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.

January 6, 2021: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

January 8, 2021: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the February 5, 2021 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.

January 27, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

January 28, 2021: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

February 17, 2021: The Board of Adjustment hearing for Panel B on February 17, 2021 was cancelled.

March 17, 2021: The Board of Adjustment hearing for Panel B on March 17, 2021 was cancelled.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. #B Dallas, TX.
Mike King 1500 Marilla St. 5CN Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-017, on application of Rob Baldwin **grant** the request for special exceptions to the side yard setback regulations in the Dallas Development Code, subject to the following conditions:

Compliance with submitted site plan.

SECONDED: Johnson

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-024(OA)

BUILDING OFFICIAL’S REPORT: Application of Eugene Valentine for a special exception to the landscaping regulations at 2428 Harrison Avenue. This property is more fully described as Lots 1-7 and portion of Lot 8, Block F868, and is zoned an RS-C Regional Service Commercial Subdistrict within Planned Development District No. 595, which requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2428 Harrison Avenue

APPLICANT: Eugene Valentine

REQUEST:

A request for a special exception to the landscape regulations is made to remodel and enlarge an existing approximately 18,575 square-foot structure on the site to support an industrial (inside) food processing use (Bud's Salads) and not fully meet the landscape regulations. The applicant seeks to reduce the required landscape provisions for this site.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property.
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the board shall consider the following factors:

- the extent to which there is residential adjacency.

- the topography of the site.
- the extent to which landscaping exists for which no credit is given under this article.
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

The chief arborist recommends approval of the proposed alternate landscape plan because strict compliance to Article X requirements will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 595, RS-C Regional Service Commercial Subdistrict

Northwest: PD No. 595, RS-C Regional Service Commercial Subdistrict

Northeast: PD No. 595, RS-C & MU Regional Service Commercial & Mixed-Use Subdistricts

Southeast: PD No. 595, NC Neighborhood Commercial Subdistrict

Southwest: PD No. 595, RS-C & MU Regional Service Commercial & Mixed-Use Subdistricts

Land Use:

The subject site contains nonconforming industrial (inside) food processing use (Bud's Salads). The areas to the north, east, and west, and south are developed with commercial and office uses.

Zoning/BDA History:

1. BDA190-112, Property at 2428 Harrison Avenue (the subject site) On October 19, 2021, the Board of Adjustment Panel B approved a request for a special exception to enlarge a nonconforming industrial (inside) food processing use, variance to the front yard setback regulations of 13 feet to remodel and expand the aforementioned nonconforming structure and a canopy, part of which is to be located two feet from one of the site's three front property lines along Coombs Street, and a variance to expand the aforementioned nonconforming structure and a canopy, part of which is to be located at the property line (zero feet) from one of the site's three front property lines along Harrison Avenue.

GENERAL FACTS/STAFF ANALYSIS:

A request for a special exception to the landscape regulations is made to remodel and enlarge an existing approximately 18,575 square-foot structure on the site to support an industrial (inside) food processing use (Bud's Salads) and not fully meet the landscape regulations. The applicant seeks to reduce the required landscape provisions for this site.

The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within 24 months. In this case, the existing structure will be remodeled and enlarged with an approximately 18,575 square-foot structure on the site to support an industrial (inside) food processing use (Bud's Salads). This enlargement triggers compliance with landscape regulations.

The City of Dallas chief arborist submitted a memo regarding the applicant's request (**Attachment A**).

The chief arborist's memo states the following with regard to "request":

The applicant is seeking a special exception to the landscaping requirements of Article X, as applied to PD 595 (RS-C). The property will include an existing structure and will provide an additional structure which mandates Article X landscape regulations for the full property which is less than two acres in area.

The chief arborist's memo states the following with regard to "provision":

The applicant has provided a landscape plan for the entire property, as required per Article X. An artificial lot is not applicable for the new construction because the lot is less than 2 acres in area. The plan provides for a street buffer zone for Logan Street and a small section of Coombs Street only. The property requires twenty points for landscape design options, and they indicate an ability to attain 23 points. The points include an enhanced buffer on Logan Street, water-wise plant materials, a bioswale within the enhanced landscape buffer, and additional plant materials.

The chief arborist's memo states the following with regard to "deficiencies":

The site design will not conform to minimum Article X requirements for the street buffer zone landscape area, required number of site trees (on the lot), or required street trees. The street buffer zone is not provided for Harrison Avenue and for only a portion of Coombs Street. Existing site conditions and use prohibit compliance with the street buffer zone requirements along these frontages unless the total site is redesigned.

The chief arborist's revised memo states the following with regard to the "recommendation":

The chief arborist recommends approval of the proposed alternate landscape plan because strict compliance to Article X requirements will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring properties.

If the board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be provided an exception from the required landscape provisions.

Timeline:

December 30, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 6, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 8, 2021: The Board Administrator emailed the applicant's representative the public hearing date and panel that will consider the application; the January 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the February 5, 2020 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."

January 28, 2021: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

January 28, 2021: The City of Dallas Chief Arborist submitted a memo regarding this request (Attachment A).
February 17, 2021: The Board of Adjustment hearing for Panel B on February 17, 2021 was cancelled.
March 17, 2021: The Board of Adjustment hearing for Panel B on March 17, 2021 was cancelled.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Eugene Valentine 500 W. 7th St. #300 Ft. Worth, TX

APPEARING IN OPPOSITION: None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-024, on application of Eugene Valentine, **grant** the request for a special exception to the landscaping regulations in the Dallas Development Code, subject to the following conditions:

Compliance with submitted alternate landscape plan.

SECONDED: Johnson

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-026(OA)

BUILDING OFFICIAL’S REPORT: Application of Mir Alikhan for a special exception to the fence height regulations at 4619 Coles Manor Place. This property is more fully described as Lot 1A, Block A/2002, and is zoned an MF-2(A) Multifamily District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct an eight-foot-high fence in a required front yard, which will require a four-foot special exception to the fence regulations.

LOCATION: 4619 Coles Manor Place

APPLICANT: Mir Alikhan

REQUEST:

A request for a special exception to the fence standards regulations related to a height of four feet is made to construct and maintain an eight-foot-high wood fence located in the site’s required front yard on a site developed with a multifamily structure.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) Multifamily District
North: PD No. 424
East: MF-2(A) Multifamily District
South: R MF-2(A) Multifamily District
West: PD No. 424

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

This request for a special exception to the fence standards regulations related to a height of four feet is made to construct and maintain an eight-foot-high solid wood fence located in the site's required front yard on a site developed with a single family home.

Dallas Development Code states that in all residential districts except multifamily districts a fence may not exceed four feet above grade when located in the required front yard. The subject site is zoned an MF-2(A) Multifamily District, which requires a 15-foot front yard setback.

The applicant has submitted a site plan and elevation showing the proposed fence in the front yard setback reaches a maximum height of eight feet.

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

- The location of the proposed fence is located on the front lot line parallel to Coles Manor Place or approximately six feet from the pavement line.
- The length of the proposed fence in the front yard setback parallel to Coles Manor Place is approximately 93 feet.

Staff conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and noticed no other fences that appear to be above four feet-in-height and located in a front yard setback.

As of April 9, 2021, one letter has been submitted in support and none in opposition to this request.

The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach eight feet-in-height) will not adversely affect neighboring property.

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

Timeline:

January 13, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

February 11, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

February 12, 2021: 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 February 23, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the March 5, 2021 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.”

February 25, 2021: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code

Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 17, 2021: The Board of Adjustment hearing for Panel B on March 17, 2021 was cancelled.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Mir Alikhan 2727 Inwood Rd. #1458 Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-026, on application of Mir Alikhan, **grant** the request for a special exception to the fence height regulations in the Dallas Development Code, subject to the following conditions:

Compliance with the submitted site plan and elevation.

SECONDED: Johnson

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-027(OA)

BUILDING OFFICIAL’S REPORT: Application of Megan Knauss for a special exception to the single-family regulations at 1235 Flanders Street. This property is more fully described as the west 75 feet of Lot 2 Block 9/3970 and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit for non-rent, which will require a special exception to the single-family zoning use regulations.

LOCATION: 1235 Flanders Street

APPLICANT: Megan Knauss

REQUESTS:

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 being developed with a single-family use.

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

Section 51-4.201(b)(1)(E)(i) of the Dallas Development Code specifies that the board may grant a special exception to the single family use regulations of the Dallas Development Code to

authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION

Zoning:

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

Land Use:

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

Zoning/BDA History:

There have not been any related board or zoning cases in the vicinity 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 one-story additional dwelling on a site being developed with a single-family use.

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 an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: (1) be use as rental accommodations; or (2) adversely affect neighboring properties.

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 identifies the location of two building footprints, the larger of the two denoted as “conditioned main residence,” which is the proposed single family residential main structure. The smaller of the two structures is marked as “guest house”.

This request centers on the function of what is proposed to be inside the smaller structure on the site – the “proposed guest house” structure, specifically its collection of rooms/features shown on the floor plan.

DCAD records identify the site as having “no improvements” for the property at 1235 Flanders Street; however, city records indicate a building permit for a single-family structure was issued on August 25, 2020.

According to the submitted site plan the main structure will contain 2,550 square feet of total living area and the proposed additional dwelling unit will contain 385 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.

As of April 9, 2021, no letters have been submitted in support or in opposition to the request.

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

Timeline:

January 21, 2021: 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, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 12, 2021: 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 February 23, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the March 5, 2021 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.”

February 23, 2021: The applicant submitted a letter to the board (**Attachment A**).

February 25, 2021: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 17, 2021: The Board of Adjustment hearing for Panel B on March 17, 2021 was cancelled.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Megan Knauss 1721 n. Winnetka Ave. Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-027, on application of Megan Knauss, **grant** the request for a special exception to the single-family regulations in the Dallas Development Code subject to the following conditions:

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

SECONDED: Johnson

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-028(OA)

BUILDING OFFICIAL’S REPORT: Application of John Brodrick for a special exception to the fence height regulations at 9362 Hathaway Street. This property is more fully described as Lot 17, Block 7/5597, and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct a nine-foot-high fence in a required front yard, which will require a five-foot special exception to the fence regulations.

LOCATION: 9362 Hathaway Street

APPLICANT: John Brodrick

REQUEST:

A request for a special exception to the fence standards regulations related to a height of five-feet is made to construct and maintain an eight-foot-tall iron fence, with nine-foot-tall masonry columns and a pedestrian gate located in the site’s Hathaway Street and Deloache Street 40-foot front yard setbacks on a site that is undeveloped.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single Family District)

North: R-1ac(A) (Single Family District)
East: R-1ac(A) (Single Family District)
South: R-1ac(A) (Single Family District)
West: R-1ac(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 related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

This request for a special exception to the fence standards regulations related to a height of five feet is made to construct and maintain an eight-foot-tall iron fence, with nine-foot-tall masonry columns and a pedestrian gate located in the site's Hathaway Street and Deloache Street 40-foot front yard setbacks on a site that is undeveloped.

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

The subject site is located at the northeast corner of Hathaway Street and Deloache Street. The property has a 40-foot front yard setback along both street frontages. The site has a requirement for a 40-foot front yard setback along Deloache Street, the shorter of the two frontages, which is always deemed the front yard on a corner lot in this zoning district. The site has an additional 40-foot front yard setback along Hathaway Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 10-foot side yard setback is required. However, the site's Hathaway Street frontage that would function as a side yard on the property is treated as a front yard setback nonetheless, to maintain the continuity of the front yard setback established by the lots to the south that are oriented west towards Hathaway Street.

The applicant has submitted a site plan and elevation showing the proposed fence in the front yard setback reaches a maximum height of nine feet.

- The following additional information was gleaned from the submitted site plan:
 - Along Hathaway Street: the proposal is represented as being approximately 200 feet-in-length parallel to the street and approximately 40 feet perpendicular to the street on the north and south side of the site in this required front yard; located on the front property line or approximately 16 feet from the pavement line.
 - Along Deloache Street: the proposal is represented as being approximately 175 feet-in-length parallel to the street and approximately 40 feet perpendicular to the street on the

east and west side of the site in this required front yard; located on the front property line or approximately 16 feet from the pavement line.

Staff conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and noticed no other fences that appear to be above four feet-in-height and located in a front yard setback.

As of April 9, 2021, no letters in opposition and two letters in support have been submitted to this request.

The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach nine-feet in-height) will not adversely affect neighboring property.

Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding four feet-in-height to be located in the front yard setbacks and to be constructed and maintained in the location and of the heights as shown on this document.

Timeline:

- January 21, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- February 11, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.
- February 12, 2021: 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 February 23, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the March 5, 2021 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.”
- February 25, 2021: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 17, 2021: The Board of Adjustment hearing for Panel B on March 17, 2021 was cancelled.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: John Brodrick 5620 Deloache Ave. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-028, on application of John Brodrick, **grant** the request for a special exception to the fence height regulations in the Dallas Development Code, subject to the following conditions:

Compliance with the submitted site plan and elevation.

SECONDED: Johnson

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-032(OA)

BUILDING OFFICIAL'S REPORT: Application of Sandra Simmons represented by Kenneth R. Demko for a special exception to the front yard setback regulations for tree preservation at 6652 Fisher Road. This property is more fully described as Tract 4, Block 5424, and is zoned an R-7.5(A) Single Family District, which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a residential structure and provide a 15-foot front yard setback, which will require a 10-foot special exception to the front yard setback regulations.

LOCATION: 6652 Fisher Road

APPLICANT: Sandra Simmons represented by Kenneth R. Demko

REQUESTS:

A request for a special exception to the minimum front yard setback requirements to preserve existing trees is made to demolish an existing single-family structure and construct and maintain an approximately 3,313 square-foot two-story single-family structure, part of which is to be located 15-feet from one of the site's two front property lines on Santa Anita Drive or 10 feet into the 25-foot front yard setback on a site that is developed with a single-family structure.

STANDARD FOR A SPECIAL EXCEPTION TO THE MINIMUM FRONT YARD REQUIREMENTS TO PRESERVE AN EXISTING TREE:

Section 51(A)-4.401(d) of the Dallas Development Code specifies that the board may grant a special exception to the minimum front yard requirements in this section to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

STAFF RECOMMENDATION (Tree preservation):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the requested special exception was compatible with the character of the neighborhood; the value of surrounding properties will not be adversely affected; and that, according to the City of Dallas Chief Arborist, the tree denoted on the submitted site plan, is worthy of preservation.

Zoning:

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

Land Use:

The subject site 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:

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

GENERAL FACTS /STAFF ANALYSIS (tree preservation):

This request for a special exception to the minimum front yard requirements to preserve existing trees focuses on demolishing an existing single-family structure and construct and maintain an approximately 3,313 square-foot two-story single-family structure, part of which is to be located 15-feet from one of the site’s two front property lines on Santa Anita Drive or 10 feet into the 25-foot front yard setback on a site that is developed with a single-family structure.

The subject site is flat, rectangular (approximately 67 feet by 150 feet), and 9,966 square feet in area. The site is zoned an R-7.5(A) District where lots are typically 7,500 square feet in area. Additionally, most lots in the R-7.5(A) District have one 25-foot front yard setback, two five-foot side yard setbacks, and one five-foot rear yard setback. As noted, this site has two 25-foot front yard setbacks and two five-foot side yard setbacks.

The submitted site plan depicts the proposed structure located 15-feet from the site’s front property line on Santa Anita Drive and a tree located within a side yard setback.

The City of Dallas Chief Arborist submitted a memo regarding this request (**Attachment A**) and stated the following: “Based on the professional arborist’s report to the owner and my observations, I have determined the large pecan tree for this report is deemed worthy of preservation. The continuation of the health and safety conditions for the prolonged life of the tree is the responsibility of the homeowner.”

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

- Whether the requested special exception is compatible with the character of the neighborhood.
- Whether the value of surrounding properties will be adversely affected.
- Whether the tree is worthy of preservation.

If the board were to grant the special exception request and impose the submitted site plan as a condition, the structure in one of the two front yard setbacks would be limited to what is shown on this document.

TIMELINE:

February 8, 2021: 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 4, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 8, 2021: 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 March 30, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the April 9, 2021 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.

March 19, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

April 2, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

April 4, 2021: The City of Dallas Chief Arborist emailed the Board Administrator information regarding this application (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Kenneth Demko 7730 Forney Rd. #19 Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-032, on application of Sandra Simmons represented by Kenneth Demko, **grant** the request for a special exception to the front yard setback regulations for tree preservation in the Dallas Development Code is granted, subject to the following conditions:

Compliance with the submitted site plan.

SECONDED: Johnson

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-020(OA)

BUILDING OFFICIAL'S REPORT: Application of Santos Martinez for a variance to the front yard setback regulations at 2009 Oates Drive. This property is more fully described as Tract 3, Block 7404, and is zoned an MF-2(A) Multifamily District, which requires a front yard setback of 25 feet. The applicant proposes to construct a multifamily residential structure and provide a 15-foot front yard setback, which will require a 10-foot variance to the front yard setback regulations.

LOCATION: 2009 Oates Drive

APPLICANT: Santos Martinez

REQUEST:

A request for a variance to the front yard setback regulations of 10 feet is made to construct and maintain one of the proposed 14 townhome-style (seven on this lot) multifamily units with a total of 1,964 square feet, part of which is to be located 15 feet from the site's front property lines or 10 feet into this 25-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:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the January 28th staff review team meeting that the applicant had not substantiated how the variance is necessary to permit the development of the subject site. The property is

slightly irregular and flat, but it is staff's opinion that the applicant maintains the ability to develop the lot in a manner commensurate with the development upon other parcels of land with the same MF-2(A) Multifamily District zoning.

BACKGROUND INFORMATION:

Zoning:

- Site: MF-2(A) (Multifamily District)
- North: R-7.5(A) (Single Family District)
- East: MF-2(A) (Multifamily 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, and west, are developed with single family uses. The properties to the east are developed with single family and multifamily 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:

This request for a variance to the front yard setback focuses on constructing and maintaining one of the proposed townhome-style multifamily units with 1,964 square feet, part of which is to be located 15 feet from the site's front property line or 10 feet into this 25-foot front yard setback on a site that is undeveloped.

The subject site is zoned an MF-2(A) Multifamily District, which requires a minimum front yard of 15 feet. However, this property is adjacent to a parcel zoned an R-7(A) Single Family District. The Dallas Development Code states that if a block face is divided by two or more zoning districts, the front yard for the entire block face must comply with the requirements of the district with the greatest front yard requirement to maintain block continuity. In this case, to maintain block face continuity requires a 25-foot front yard to match the adjoining R-7(A) Single Family District zoned properties to the west.

The submitted site plan indicates the properties for 2009 Oates Drive (subject site) and 2015 Oates Drive (BDA201-021) were combined to develop 14 townhome structures. Furthermore, the site plan indicates two of the proposed 14 townhome structures are located 15 feet from the Oates Drive front property line or 10 feet into this 25-foot front yard setback.

The subject lots are flat, slightly irregular in shape (approximately 244 feet x 150 feet), and according to the submitted application a combined 0.80 acres (or 35,279 square feet) in area.

The applicant provided two petitions with a total of 10 signatures in support for this request.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same an MF-2(A) Multifamily District 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 MF-2(A) Multifamily District zoning classification.

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 is a structure that would be located 15-feet from the site’s front property line (or 10 feet into this 25-foot front yard setback).

Timeline:

December 22, 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.

January 6, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

January 8, 2021: The Board of Adjustment 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 January 26th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th 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.”

January 26, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

January 28, 2021: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 1, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment B**).

February 17, 2021: The Board of Adjustment hearing for Panel B on February 17, 2021 was cancelled.

March 17, 2021: The Board of Adjustment hearing for Panel B on March 17, 2021 was cancelled.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Santos Martinez 12 Tanager Terrace Angel Fire, NM
Sean Parsons 6510 Abrams Rd. #400 Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-020, on application of Santos Martinez, **deny** the variance to the front yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

SECONDED: Shouse

AYES: 4 - Shouse, Vermillion, Johnson, Williams

NAYS: 1- Schwartz

MOTION PASSED: 4 –1

FILE NUMBER: BDA201-021(OA)

BUILDING OFFICIAL’S REPORT: Application of Santos Martinez for a variance to the front yard setback regulations at 2015 Oates Drive. This property is more fully described as Tract 4, Block 7404, and is zoned an MF-2(A) Multifamily District, which requires a front yard setback of 25 feet. The applicant proposes to construct a multi-family residential structure and provide a 15-foot front yard setback, which will require a 10-foot variance to the front yard setback regulations.

LOCATION: 2015 Oates Drive

APPLICANT: Santos Martinez

REQUEST:

A request for a variance to the front yard setback regulations of 10 feet is made to construct and maintain one of the proposed 14 townhome-style (seven on this lot) multifamily units with a total of 1,969 square feet, part of which is to be located 15 feet from the site’s front property lines or 10 feet into this 25-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:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the January 28th staff review team meeting that the applicant had not substantiated how the variance is necessary to permit the development of the subject site. The property is slightly irregular and flat, but it is staff's opinion that the applicant maintains the ability to develop the lot in a manner commensurate with the development upon other parcels of land with the same MF-2(A) Multifamily District zoning.

BACKGROUND INFORMATION:

Zoning:

- Site: MF-2(A) (Multifamily District)
North: R-7.5(A) (Single Family District)
East: MF-2(A) (Multifamily 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, and west, are developed with single family uses. The properties to the east are developed with single family and multifamily 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:

This request for a variance to the front yard setback focuses on constructing and maintaining one of the proposed townhome-style multifamily units with 1,969 square feet, part of which is to be located 15 feet from the site's front property line or 10 feet into this 25-foot front yard setback on a site that is undeveloped.

The subject site is zoned an MF-2(A) Multifamily District, which requires a minimum front yard of 15 feet. However, this property is adjacent to a parcel zoned an R-7(A) Single Family District. The Dallas Development Code states that if a block face is divided by two or more zoning districts, the front yard for the entire block face must comply with the requirements of the district with the greatest front yard requirement to maintain block continuity. In this case, to maintain

block face continuity requires a 25-foot front yard to match the adjoining R-7(A) Single Family District zoned properties to the west.

The submitted site plan indicates the properties for 2015 Oates Drive (subject site) and 2009 Oates Drive (BDA201-020) were combined to develop 14 townhome structures. Furthermore, the site plan indicates two of the proposed 14 townhome structures are located 15 feet from the Oates Drive front property line or 10 feet into this 25-foot front yard setback.

The subject lots are flat, slightly irregular in shape (approximately 244 feet x 150 feet), and according to the submitted application a combined 0.80 acres (or 35,279 square feet) in area.

The applicant provided two petitions with a total of 10 signatures in support for this request.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same an MF-2(A) Multifamily District 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 MF-2(A) Multifamily District zoning classification.

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 is a structure that would be located 15-feet from the site’s front property line (or 10 feet into this 25-foot front yard setback).

Timeline:

December 22, 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.

January 6, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

January 8, 2021: The Board of Adjustment 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 January 26th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th 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."

January 26, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

January 28, 2021: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 1, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment B**).

February 17, 2021: The Board of Adjustment hearing for Panel B on February 17, 2021 was cancelled.

March 17, 2021: The Board of Adjustment hearing for Panel B on March 17, 2021 was cancelled.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Santos Martinez 12 Tanager Terrace Angel Fire, NM
Sean Parsons 6510 Abrams Rd. #400 Dallas, TX
Laura Lewis 8765 Stockard Dr. #902 Frisco, TX

APPEARING IN OPPOSITION: Claude Odinet 1923 Oates Dr. Dallas, TX

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-021, on application of Santos Martinez, **deny** the variance to the front yard setback regulations requested by this applicant

without prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

SECONDED: Williams

AYES: 4 - Shouse, Vermillion, Johnson, Williams

NAYS: 1- Schwartz

MOTION PASSED: 4 –1

FILE NUMBER: BDA201-025(OA)

BUILDING OFFICIAL'S REPORT: Application of Lillian Love Kennedy for a special exception to the fence height regulations at 7004 Creek Bend Road. This property is more fully described as Lot 49A Block 0/8727 and is zoned Planned Development District No. 106, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct a six-foot four-inch-high fence in a required front yard, which will require a two-foot four-inch special exception to the fence regulations.

LOCATION: 7004 Creek Bend Road

APPLICANT: Lillian Love Kennedy

REQUEST:

A request for a special exception to the fence standards regulations related to height of two-feet four-inches is made to construct and maintain a six-foot-high wrought iron fence with a six-foot-four-inch wrought iron vehicular gate located in the site's required front yard on a property developed with a single-family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 106 (Planned Development District)

North: PD No. 106 (Planned Development District)

South: PD No. 106 (Planned Development District)

East: PD No. 106 (Planned Development District)

West: PD No. 106 (Planned Development District)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

This request for a special exception to the fence standards regulations related to height of two-foot four-inches is made to construct and maintain a six-foot-high wrought iron fence with a six-foot four-inch wrought iron vehicular gate located in the site's required front yard on a property developed with a single family home.

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 Planned Development District No. 106, which requires a 30-foot front yard setback.

The applicant has submitted a site plan and elevation showing the proposed fence in the front yard setback reaches a maximum height of six-foot four-inches.

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

- The location of the proposed fence is located at the lot line along Creek Bend Road or approximately between 22 and 28 feet from the pavement line.
- The length of the proposed fence in the front yard along Creek Bend Road is approximately 80 feet and 40 feet along the west side separating the adjacent property.

Staff conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and noticed no other fences that appear to be above four feet-in-height and located in a front yard setback.

As of April 9, 2021, three letters in opposition and no letters have been submitted in support to the requests have been received by staff.

The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach six-foot four-inches in-height) will not adversely affect neighboring property.

Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding two-foot four-inches-in-

height to be located in the front yard setback and to be constructed and maintained in the location and of the heights as shown on this document.

Timeline:

December 16, 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.

February 11, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

February 12, 2021: 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 February 23, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the March 5, 2021 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.”

February 25, 2021: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 17, 2021: The Board of Adjustment hearing for Panel B on March 17, 2021 was cancelled.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Lillian Kennedy 7004 Creek Bend Rd. Dallas, TX

APPEARING IN OPPOSITION: Mike Nesbitt 7000 Creek Bed Rd. Dallas, TX

MOTION: Williams

I move that the Board of Adjustment, in Appeal No. BDA 201-025, on application of Lillian Love Kennedy, **grant** the request of this applicant to construct and/or maintain a six-foot four-inch 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.

SECONDED: Vermillion

AYES: 5 - Shouse, Vermillion, Johnson, Williams, Schwartz

NAYS: 0-

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA201-034(OA)

BUILDING OFFICIAL’S REPORT: Application of La Sierra Planning Group for a special exception to the front yard setback regulations for tree preservation, and a variance to the off-street parking regulations at 3612 Overbrook Drive. This property is more fully described as Lot 3A, Block 4/2022, and is zoned Conservation District No. 17, which requires a front yard setback of 83 feet and requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if space is in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a residential accessory structure and provide no front yard setback (zero-feet), which will require an 83-foot special exception to the front yard setback regulations, and to construct an enclosed parking space with a setback of eight feet from the right-of-way line, which will require a variance of 12 feet to the off-street parking regulations.

LOCATION: 3612 Overbrook Drive

APPLICANT: DLH Family Trust
represented by Santos Martinez of La Sierra Planning Group

REQUEST:

The following requests have been made on a property that is developed with a single-family home and two detached accessory structures:

1. A request for a special exception to the minimum front yard requirements to preserve seven existing trees is made to construct and maintain an approximately 355-square-foot accessory structure, which is located as close as eight feet from the Edgewater Street front property line or 75 feet into the 83-foot front yard setback. However, since the conservation district prohibits garages in the front yard, the request is to provide no front yard; thereby, allowing the accessory structure in what is no longer a front yard.
2. A request for a variance to the off-street parking regulations of eight feet is made to maintain two parking spaces in an enclosed structure on the subject site. The spaces in this enclosed garage would be located approximately seven-feet nine-inches or as close as eight feet from the Edgewater Street right-of-way line, 12 feet into the required 20-foot distance from the right-of-way line.

STANDARD FOR A SPECIAL EXCEPTION TO THE MINIMUM FRONT YARD REQUIREMENTS TO PRESERVE AN EXISTING TREE:

Section 51(A)-4.401(d) of the Dallas Development Code specifies that the board may grant a special exception to the minimum front yard requirements in this section to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- (D) Whether the requested special exception is compatible with the character of the neighborhood.
- (E) Whether the value of surrounding properties will be adversely affected.
- (F) Whether the tree is worthy of preservation.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION (Tree preservation):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the requested special exception was compatible with the character of the neighborhood; the value of surrounding properties will not be adversely affected; and that, according to the City of Dallas Chief Arborist, the trees denoted on the submitted site plan, are worthy of preservation.

STAFF RECOMMENDATION (parking variance):

Denial.

Rationale:

- The applicant provided documentation (**Attachment A**) that the subject side is restrictive due to having a slope. However, staff concluded that this request is contrary to public interest in that the Sustainable Development and Construction Senior Engineer has objections to the request since, the topography of the site would challenge a proposed driveway to meet design standards such as driveway width, sidewalk, curb return radius, gutter, visibility triangle. The request would adversely change the operations of such a narrow public road.

BACKGROUND INFORMATION:

Zoning:

Site: Conservation District No. 17
North: Conservation District No. 17
South: Planned Development District No. 193, Duplex District
East: Conservation District No. 17
West: Conservation District No. 17

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS /STAFF ANALYSIS (tree preservation):

This request for a special exception to the minimum front yard requirements to preserve seven existing trees is made to construct and maintain an approximately 355-square-foot accessory structure, which is located as close as eight feet from the Edgewater Street front property line or 75 feet into the 83-foot front yard setback. However, the property is zoned CD No. 17 which requires accessory structures, carports, garages, and porte cocheres to be located in the rear 50 percent of the lot. Additionally, on corner lots accessory structures may not be located closer to the cornerside lot line than the main structure. Since the conservation district prohibits garages in the front yard, the request is to provide no front yard; thereby, allowing the accessory structure in what is no longer a front yard.

The submitted site plan depicts a proposed 355-square-foot accessory structure, which is located as close as eight feet from the Edgewater Street property line or 75 feet into the 83-foot front yard setback. Two trees are depicted within the front yard setback as well.

The City of Dallas Chief Arborist submitted a memo regarding this request (**Attachment B**) and stated the following: “The assessment of a tree, or trees, to be preserved for the special exception for a front yard entails a review of seven trees identified by an independent arborist, Mr. Michael Sultan, for the applicant. My statements are based on the details from the March 27, 2021, independent arborist’s report, and my opinion of site conditions.

The proposed garage requested under the special exception would have the potential for a significant impact on the roots of two trees (#1 and #7) in the report. The ability to sustain the trees throughout and after construction would likely be based on the construction methods employed to construct in the proposed location. That being said, the two trees are considered worthy of preservation.

Trees #2 through #6 of the arborist's report, which the owner desires to retain, are mentioned in relation to their potential impact if a new garage is built within the required setback. I am in agreement with Mr. Sultan that the five trees are worthy of preservation."

All healthy protected trees are regulated under the permit and replacement requirements of the conservation district. The owner may only remove trees for construction with an approved tree removal application. The property is not subject to Article X tree conservation regulations.

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

- Whether the requested special exception is compatible with the character of the neighborhood.
- Whether the value of surrounding properties will be adversely affected.
- Whether the tree is worthy of preservation.

If the board were to grant the special exception request and impose the submitted site plan as a condition, the structure in one of the two front yard setbacks would be limited to what is shown on this document.

GENERAL FACTS/STAFF ANALYSIS (parking variance):

This request for a variance to the off-street parking regulations focuses on maintaining two enclosed parking spaces in a proposed 355-square-foot accessory structure on the subject site.

The submitted site plan denotes the location of parking spaces within the enclosed garage would be as close as eight feet from the site's Edgewater Street property line or 12 feet into the required 20-foot distance from the required right-of-way line.

Section 51(A)-4.301(a)(9) of the Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if space is located in an enclosed structure and if the space faces upon or can be entered directly from a street or alley.

DCAD records indicate the property located at 3612 Overbrook Drive is developed with a main structure containing 5,540 square feet built in 2010, a 441-square-foot detached garage, a 612 square-foot cabana, a 270-square-foot porte-cochere, a deck, and a pool.

The subject site is sloped, slightly rectangular (approximately 103 feet by 250 feet), and 23,522 square feet in area.

The Sustainable Development Department Senior Engineer has submitted a review comment sheet recommending denial with the following comment:

“Edgewater Street has a narrow (substandard) width, which benefits from the line of shrubs on the north edge. The topography of the site would challenge a proposed driveway to meet design standards such as driveway width, sidewalk, curb return radius, gutter, visibility triangle. The request would adversely change the operations of such narrow public road”.

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

- That granting the variance to the off-street parking regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance is necessary to permit development of 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 with the same Conservation District No. 17 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 with the same Conservation District No. 17 zoning classification.

If the board were to grant the request for a variance for an enclosed garage to be located as close as eight feet from the right-of-way line adjacent to the alley or 12-feet into the required 20-foot setback, staff recommends imposing the following conditions:

1. Compliance with the submitted site plan is required.
2. An automatic garage door must be installed and maintained in working order at all times.

Timeline:

February 24, 2021: 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 4, 2021: The Board of Adjustment Secretary assigned this case to the Board of Adjustment Panel B.

March 8, 2021: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 30, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the April 9, 2021 deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.”

March 28, 2021: The applicant submitted additional documentation on this application beyond what was submitted with the original application (**Attachment A**).

April 1, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February 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 Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.

April 4, 2021: The City of Dallas Chief Arborist emailed the Board Administrator information regarding this application (**Attachment B**).

April 6, 2021: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked “Recommends Denial”. (**Attachment C**).

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Santos Martinez 12 Tanager Terrace Angel Fire, NM

APPEARING IN OPPOSITION: Fred Albrecht 3606 Edgewater Dallas, TX
 Michael Dalton 3604 Edgewater Dallas, TX
 Larry Shosid 4234 Glenwood Dallas, TX
 Susan Griffin 3610 Edgewater Dallas, TX

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 201-034, hold this matter under advisement until **June 23, 2021**.

SECONDED: Williams

AYES: 5 - Shouse, Vermillion, Johnson, Williams, Schwartz

NAYS: 0-
MOTION PASSED: 5 –0(unanimously)

FILE NUMBER: BDA201-023(JM)

BUILDING OFFICIAL’S REPORT: Application of Dallas City Council Resolution 20-1935 to require compliance of a non-conforming use at 3606 Greenville Avenue Suite A. This property is more fully described as Lots 1A and 2A, 1/2888, and is zoned a CR Community Retail District, which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a non-conforming alcoholic beverage establishment use.

LOCATION: 3606 Greenville Avenue Suite A

APPLICANT: Dallas City Council by Resolution 20-1935
Represented by Zinzi Bonilla and Naomi Green

REQUEST:

A request is made for the Board of Adjustment to establish a compliance date for a nonconforming alcoholic beverage establishment use (OT Tavern) on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES: SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

- (a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
 - (1) Amortization of nonconforming uses.
 - (A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.
 - (B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

- (i) The character of the surrounding neighborhood.
- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
- (iii) The manner in which the use is being conducted.
- (iv) The hours of operation of the use.
- (v) The extent to which continued operation of the use may threaten public health or safety.
- (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
- (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
- (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

(C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.

(D) Determination of amortization period.

- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.

- (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

The subject site is zoned a CR Community Retail District. On June 23, 1993, City Council passed Ordinance No. 21735 which added a requirement that alcoholic beverage establishment uses must obtain a Specific Use Permit (SUP) in all zoning districts. However, a Certificate of Occupancy (CO) was issued for an alcoholic beverage establishment use DBA Fish Dance on January 30, 1991—predating the ordinance requiring an SUP. The Dallas Development Code defines a “nonconforming use” as “a use that does not conform to the use regulations of this chapter but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.” Therefore, the use was legally established in 1991 and became nonconforming with the passing of Ordinance No. 21735 in 1993.

After a period of vacancy, the site lost nonconforming rights to operate an alcoholic beverage establishment without compliance to the SUP requirement. The property owners successfully argued for reinstatement of nonconforming rights on January 18, 2005.

Most recently, a CO was issued on August 28, 2008 for an alcoholic beverage establishment DBA OT Tavern with remarks indicating the BDA action taken in 2005 to reinstate the nonconforming use rights and furthermore adding, “NO INCREASE IN FLOOR AREA, SAME PARKING, 7/26/06-nonconforming 300 sf dance floor area, CORRECTION TO TENANT NAME 1/23/07. LICENSE PE, MB, LB, 02/20/2008. SEE REVISED(CORRECTED) PATIO PLAN DATED 9-1-10 CENTRAL FILES FOR MORE INFO. KM. OCUPANT [sic] LOAD OF dining=188/ PATIO= 67, UPDATE 4/27/17 sw.” This use is still in operation today.

BACKGROUND INFORMATION:

Zoning:

Site: CR-MD-1 (Community retail- Modified delta-1)

North: CR-MD-1 (Community retail- Modified delta-1)

South: CR-MD-1 (Community retail- Modified delta-1)

East: MF-2(A)-MD-1 (Multifamily 1- Modified delta-1)

West: CR-MD-1 (Community retail- Modified delta-1)

Land Use:

The subject site is developed with a multitenant commercial structure housing two nonconforming alcoholic beverage establishments. The areas to the north, south and west are developed with retail uses; and the area to the east is developed with residential uses.

Zoning/BDA History:

1. BDA 045-133, 3606 Greenville Avenue, Suite A (the subject site) On January 18, 2005, the Board of Adjustment Panel A approved a special exception reinstating nonconforming use rights for “alcoholic beverage establishment” and “dance hall” uses.

2. BDA 045-136, 3606 Greenville Avenue, Suite B (the lot immediately north of the subject site) On January 18, 2005, the Board of Adjustment Panel A approved a special exception reinstating nonconforming use rights for “alcoholic beverage establishment” and “dance hall” uses.

TIMELINE:

December 18, 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, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

February 12, 2021: The Board of Adjustment Chief Planner/Board Administrator sent the record owner of the property (Uptown Ventures LLC & Hillcrest Towers LLC) and the tenant/operator of the use (G P Sports NSL Inc. % Shaun Merchant) a certified letter (with a copy to Jill Haning, Zinzi Bonilla, and Naomi Green) informing them that a Board of Adjustment case had been filed against the nonconforming alcoholic beverage establishment use. The letter included following enclosures:

1. A copy of the Board of Adjustment application and related materials.

2. Dallas Development Code Section 51A-3.102 describing the Board of Adjustment.
3. Dallas Development Code Section 51A-2.102(90), which defines a nonconforming use.
4. Dallas Development Code Section 51A-4.704, provisions for nonconforming uses and structures.
5. Dallas Development Code Section 51A-4.703, Board of Adjustment hearing procedures.
6. City of Dallas Board of Adjustment Working Rules of Procedures.
7. The hearing procedures for Board of Adjustment amortization of a nonconforming use.

The letter also informed the owners and tenant/operator of the date, time, and location of the public hearing, and provided a deadline of March 5th to submit any information that would be incorporated into the board's docket.

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| February 25, 2021: | The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, 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. |
| March 2, 2021 | The representative for the tenant/operator requested the case be held under advisement until April 21, 2021 (minimum of 45 days from motion for continuance provided as Attachment A). |
| March 8, 2021 | The representative for city council submitted a letter to the board (Attachment C). |
| March 20, 2021 | The Panel B hearing was cancelled due to a lack of quorum. |
| March 12, 2021 | The representative for the tenant/operator submitted a letter to the board (Attachment D). |
| April 9, 2021 | The representative for city council revised their letter to the board (Attachment C). |

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR:

Naomi Green 1500 Marilla St. 7DN Dallas, TX
Kimberly Quirk 1701 N. Collins Blvd. #1100
Richardson, TX
Craig Sheils 1701 N. Collins Blvd. #1100 Richardson,
TX
Jacob Broom 5703 Anita St. Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX
Bob Heiterbran 5732 Penrose Ave. Dallas, TX
Joe Phyl 3428 Hamilton Ave. Dallas, TX
Darren Dattaio 5911 Goliad Dallas, TX

APPEARING IN OPPOSITION:

None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-023, hold this matter under advisement until June 23, 2021.

SECONDED: Johnson

AYES: 5 - Shouse, Vermillion, Johnson, Williams, Schwartz

NAYS: 0-

MOTION PASSED: 5 -0(unanimously)

MOTION: Williams

I move to adjourn the Panel B hearing.

SECONDED: Vermillion


AYES: 5 - Shouse, Vermillion, Johnson, Williams, Schwartz

NAYS: 0 -

MOTION PASSED (unanimously): 5 - 0

The meeting was adjourned at 2:51 P.M. on April 21, 2021


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.