

RECEIVED

2021 NOV 19 PM 03:31

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, OCTOBER 20, 2021**

CITY SECRETARY
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: Matt Shouse, Acting Chair, Michael Karnowski, regular member, Joseph Cannon, regular member, Thomas Fleming, alternate member and Dr. Emmanuel Glover, alternate member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Matt Shouse, Acting Chair, Michael Karnowski, regular member, Joseph Cannon, regular member, Thomas Fleming, alternate member and Dr. Emmanuel Glover, alternate member

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Pamela Daniel, Senior Planner Anna Holmes and Daniel Moore, Asst. City Attys., LaTonia Jackson, Board Secretary, Charles Trammell, Development Code, Secretary, Robyn Gerard, Senior Public Information Officer, Phil Erwin, Arborist, and Andreea Udrea, Assistant Director Interim

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Pamela Daniel, Senior Planner Anna Holmes and Daniel Moore, Asst. City Attys., LaTonia Jackson, Board Secretary, Charles Trammell, Development Code, Secretary, Robyn Gerard, Senior Public Information Officer, Phil Erwin, Arborist, and Andreea Udrea, Assistant Director Interim

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 20, 2021 docket.**

BOARD OF ADJUSTMENT ACTION: October 20, 2021

1:00 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, September 22, 2021 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: October 20, 2021

MOTION: Karnowski

Approval of the Board of Adjustment Panel B, September 22, 2021 public hearing minutes.

SECONDED: Glover

AYES: 5 – Shouse, Karnowski, Glover, Fleming, Cannon

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-089(PD)

BUILDING OFFICIAL'S REPORT: Application of Texas Permit represented by Rob Baldwin of Baldwin Associates for **1)** a special exception to the fence height regulations of four feet is made to construct and maintain an eight-foot-high fence; **2)** a special exception is made to the fence standards regulations to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet front the front lot line; and, **3)** two special exceptions are made to the visual obstruction regulations to construct and maintain portions of an eight-foot-high solid wood fence in two required 20-foot visibility triangles at the intersection of Walnut Hill Lane and Douglas Avenue at 9646 Douglas Avenue. This property is more fully described as a tract of land, in City Block 5610, and zoned an R-1ac(A) Single Family District, which limits the height of a fence in a required front yard to four feet, prohibits a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, and requires a 20-foot visibility triangle at two drive approaches onto Douglas Avenue. The applicant proposes to construct and maintain a single-family dwelling with a residential fence height of eight feet in a required front yard setback with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, with portions of the solid wood fence in the required 20-foot visibility triangles at two drive approaches onto Douglas Avenue, which will require four special exceptions.

LOCATION: 9646 Douglas Avenue

**APPLICANT: Texas Permit
Represented by Rob Baldwin of Baldwin Associates**

REQUEST:

The property is currently being developed with an approximately 12,346-square-foot single-family dwelling.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION:

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 nor constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making.

The Transportation Senior Engineer has no objections to the proposed requests to encroach into the required 20-foot visibility triangles at the two drive approaches into the property from Douglas Avenue (**Attachment A**).

BACKGROUND INFORMATION:

Zoning:

- Site: R-1ac(A) (Single Family District)
- North: R-10(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) & SUP No. 29 for a church recreation use

Land Use:

The subject site is currently under construction with a single-family dwelling unit. Surrounding properties to the north, east, and south are developed with single-family uses while the property to the west across Douglas Avenue is developed with a surface parking lot for a church recreation use.

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:

The property is currently being developed with an approximately 12,346-square-foot single-family dwelling. The applicant proposes to construct an eight-foot-high fence made of stucco material and metal rolling gates along two drive approaches fronting Douglas Avenue.

The requests for special exceptions to the fence standards regulations related to height and the visual obstruction focus on constructing and maintaining:

- an eight-foot-high solid fence located in two front yard setbacks;
- as close as the property line along Walnut Hill Lane and Douglas Avenue; and,
- with two rolling gates in 20-foot visibility triangles at two drive approaches onto Douglas Avenue.

The subject site is zoned an R-1ac(A) Single Family District and requires a minimum front yard setback of 40 feet. However, the property is situated along the northeast corner of Walnut Hill Lane and Douglas Avenue and thereby, contains two front yards that must maintain the 40-foot front yard setback in compliance with the front yard provisions for residential districts. Section 51A-4.401(b)(1) of the Dallas Development Code regulates that if a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulations in Section 51A-4.402. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations in Section 51A-4.402. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained. Thus, the location of the subject site fronting along two streets imposes an additional front yard setback requirement of 40 feet to maintain the continuity of the block face.

Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. As noted, the proposed fence would be within the two required 40-foot front yard setbacks.

Additionally, Section 51A-4.602(a)(3) of the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.

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

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and alleys on properties zoned single family); and

- between two-and-a-half and eight-feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The following information is shown on the submitted site plan and elevation:

- The proposed fence and gates are located at the lot line along Walnut Hill Lane and Douglas Avenue and at its closest point appear to be approximately one-foot from the back of curb/pavement line.
- Along Walnut Hill Lane the fence is proposed at a width of 132.41 feet and along Douglas Avenue the fence is proposed at a width of 203.25 feet.
- The fence is proposed to be constructed of stucco while the rolling gates are proposed to be constructed of metal.

As of October 8, 2021, no letters have been submitted regarding the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height, openness, and visual obstruction regulations will not adversely affect neighboring property nor constitute a traffic hazard.

Granting the special exceptions to the fence standards related to the height would require the proposal exceeding four feet-in-height in the front yard setback with fence panels having less than 50 percent openness and located along Walnut Hill Lane and Douglas Avenue within two visibility triangles to be maintained in the locations, heights and materials as shown on the site plan and elevation.

Timeline:

- July 30, 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.
- Sept. 16, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.
- Sept. 17, 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 September 28, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the October 8, 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.

Sept. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

October 1, 2021: The Transportation Senior Engineer submitted a review comment sheet associated with the visual obstructions requested (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: October 20, 2021

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

APPEARING IN OPPOSITION: None.

MOTION: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 201-089, on application of Janet Sipes of Texas Permit LLC, represented by Rob Baldwin of Baldwin Associates, **grant** the special exceptions to the fence height, fence standards and visibility obstruction regulations contained in the Dallas Development Code subject to the following condition(s):

Compliance with the submitted site plan and elevation is required.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Glover, Fleming, Cannon

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-091(PD)

BUILDING OFFICIAL’S REPORT: Application of Robert Richmond represented by Tommy Nelson for a variance to the front yard setback regulations at 9823 Kilarney Drive. This property is more fully described as Lot 8 in City Block 8/5371 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 a single-family accessory (pool and spa) structure and provide a 12-foot-eight-inch front yard setback, which will require a 12-foot-four-inch variance to the front yard setback regulations.

LOCATION: 9823 Kilarney Drive

APPLICANT: Robert Richmond represented by Tommy Nelson

REQUESTS:

A request for a variance to the front yard setback regulations of 12 feet four inches is made to construct and maintain a single-family residential accessory (pool and spa) structure within the subject site's 25-foot front yard setback on a site that is currently developed and situated on a corner lot.

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.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
 - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (e) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site being situated on a corner lot with two front yards determines this property has an unnecessary hardship and is unable to be developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning classification.

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 dwelling units.

Zoning/BDA History:

There have been no related board or zoning cases in the vicinity within the last five years; however, the subject site does have case history.

1. **BDA156-086:** On September 21, 2016, the Panel B, Board of Adjustments granted a special exception to the fence height regulations to allow an eight-foot-high fence. (**subject site**)

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on constructing and maintaining an accessory (pool and spa) structure proposed 12-feet eight-inches from the subject site's front property line, into the required 25-foot front yard setback, on a site that is developed with a single-family dwelling.

Structures on lots zoned an R-7.5(A) Single Family District must have a minimum front yard setback of 25 feet. A site plan has been submitted denoting the proposed accessory (pool and spa) structure will be located 15-feet-eight-inches from the front property line along Tranquilla Drive. The site plan depicts an approximately 308 square accessory (pool and spa) structure centered along the central interior yard fronting Tranquilla Drive.

The subject site is not irregular in shape and is approximately 10,890 square feet in lot area. An R-7.5(A) zoning district requires lots to have a minimum lot size of 7,500 square feet.

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 R-7.5(A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

Additionally, the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
- Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
- Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- The municipality consider the structure to be a nonconforming structure.

As of October 8, 2021, no letters have been submitted regarding the request.

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

Timeline:

- August 16, 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.
- Sept. 16, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.
- Sept. 17, 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 September 28, 2021 deadline to submit

additional evidence for staff to factor into their analysis; and the October 8, 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.

Sept. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted in conjunction with this application.

October 6, 2021: Documentary evidence was provided by the representative (**Attachments A & B**).

BOARD OF ADJUSTMENT ACTION: October 20, 2021

APPEARING IN FAVOR: Tommy Nelson 9823 Kilarney Dr. Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 201-091, on application of Robert Richmond, represented by Tommy Nelson, **grant** the variance to the front setback regulations contained in the Dallas Development Code subject to the following conditions:

Compliance with the submitted site plan is required.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Glover, Fleming, Cannon

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-093(PD)

BUILDING OFFICIAL'S REPORT: Application of Centurian American represented by Kay Zafar for a special exception to the visibility obstruction regulations at 2013 Jackson Street. This property is more fully described as Lot 4A, in City Block 31/127, and is zoned Subdistrict 4A within Planned Development District No. 357, the Farmers Market Special Purpose District which requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct a parking garage structure in the required visibility triangles at the drive approaches along S. Harwood Street and Jackson Street, which will require special exceptions to the visibility obstruction regulations.

LOCATION: 2013 Jackson Street

APPLICANT: Centurian American represented by Kay Zafar

REQUESTS:

A request for special exceptions to the visual obstruction regulations is made to construct a garage structure in a required 20-foot visibility triangle at drive approaches into the property from S Harwood Street and Jackson Street. The request site is currently under construction with a parking garage structure.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when in the opinion of the board, the special exception will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making.

The Transportation Senior Engineer has no objections to the proposed requests to encroach into the required 20-foot visibility triangle at the drive approaches into the property from N. Harwood Street and Jackson Street (**Attachment A**).

BACKGROUND INFORMATION:

Zoning:

Site: Subdistrict 4A within Planned Development District No. 357
North: CA-1 & H/48, Historic District 48/Sudistrict 4A within PDD No. 357
South: CA-1 & H/48, Historic District 48/Sudistrict 4 within PDD No. 357
East: Subdistrict 4 within Planned Development District No. 357
West: CA-1 & H/48, Historic District 48

Land Use:

The subject site is under construction with a garage structure while surrounding properties are developed with retail and personal service uses, office uses, vacant structures and surface parking lot uses to the north, vacant structures and surface parking lots to the south and east while the property to the west is developed with office uses.

Zoning/BDA History:

There have been no related board and zoning cases recorded in the vicinity of the subject site within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The requests for special exceptions to the visual obstruction regulations focus on constructing a parking garage structure consisting of two stories. The property is located at the corner of S. Harwood Street and Jackson Street and currently under construction with the parking garage structure. The proposed structure would obstruct one one 20-foot visibility triangle into the property (drive approach) from S Harwood Street and one 20-foot visibility triangle into the property (drive approach) from Jackson Street.

The property is located in Subdistrict 4A within Planned Development District No. 357, the Farmers Market Special Purpose District, with visual obstruction regulations reverting back to the Dallas Development Code. The code requires the portion of a lot with a triangular area formed by connecting the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection shall be maintained.

Visibility triangles are further defined in Section 51A-4.602(d) of the Dallas Development Code which states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

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

A site plan submitted with the request indicates portions of the proposed garage structure or more specifically the post encroach four feet into the required 20-foot visibility triangle at a drive approaches into the site from S. Harwood Street and Jackson Street, providing 16 feet of unobstructed area for visibility.

The Transportation Senior Engineer has no objections to the proposed request to encroach into the required 20-foot visibility triangle at the drive approaches into the property from N. Harwood Street and Jackson Street (**Attachment A**) since the request is consistent with similar conditions in other parts of the City.

The applicant has the burden of proof in establishing how granting the encroachments into portions of the 20-foot visibility triangle at the drive approaches on properties will or will not constitute a traffic hazard.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan will limit the structures to be located and maintained into the two required 20-foot visibility triangle at the drive approach into the site from both S. Harwood Street and Jackson Street, as shown on the proposed plan.

Timeline:

- August 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.
- September 16, 2021: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- September 17, 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 September 28, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the October 8, 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.”
- September 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Transportation Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- October 1, 2021: The Transportation Engineer submitted a review comment sheet marked “no objections to the request” (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: October 20, 2021

APPEARING IN FAVOR: Philip Kingston 5901 Palo Pinto Ave. Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 201-093, on application of Centurian American represented by Kay Zafar, **grant** the special exception to the visibility obstruction regulations contained in the Dallas Development Code, subject to the following condition

Compliance with the submitted site plan is required.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Glover, Fleming, Cannon

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-097(JM)

BUILDING OFFICIAL’S REPORT: Application of Michael Gooden for **1)** a special exception to the single-family use regulations; variances to the **2)** height; and, **3)** floor area ratio for an accessory structure; and **4)** a variance to the 20-foot setback for a required parking space located in an enclosed structure at 11410 St. Michaels Drive. This property is more fully described as Lot 10, Block 4/7347, and is zoned an R-16(A) Single Family District, which limits: the number of dwelling units to one; the height of an accessory structure to no more than that of the main structure; the cumulative floor area ratio of all accessory structures to 25 percent of the main structure; and, that an enclosed parking space maintain a 20-foot setback from the right-of-way line adjacent to the street or alley. The applicant proposes to construct an additional dwelling unit for non-rent with a height of 21 feet four-inches—10 feet and one-inch greater than the main structure; a floor area of 1,039 square feet which is 31.2 percent of the 3,335 square-foot main structure; and, an enclosed parking space with a 10-foot setback.

LOCATION: 11410 St. Michaels Drive

APPLICANT: Michael Gooden

REQUESTS:

The site contains an existing 11-foot, one-story, single-family, ranch-style home with 3,335 square feet of floor area. The applicant proposes to demolish the existing garage structure to construct a new two-story garage with a non-rentable additional dwelling unit on the second story.

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

Section 51(A)-4.209(6)(E)(i) of the Dallas Development Code states 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.

STANDARD FOR A VARIANCE:

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

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

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
 - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (e) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATIONS:

Special exception for an additional dwelling unit:

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.

Variance to exceed 25 percent of the floor area and height of the main structure, AND required setback for an enclosed parking space:

Approval.

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the September 30th staff review team meeting that the applicant had shown how the variances are necessary to permit commensurate development.
- While the subject lot size is approximately 22,003 square feet in area and slightly irregular in shape, but not in size since the R-16(A) District requires a minimum lot area of 16,000 square feet, the site is encumbered by two front yards, an extra five-feet of front yard setback added by plat, three right-of-way frontages, a characteristically short existing main structure (ranch-style), and many trees that limit the re-siting opportunities for the proposed garage/ADU structure.
- The applicant submitted evidence along with the application comparing the property to 22 other properties in the immediate vicinity. The analysis provided noted the existing square-footage, developable square-footage and percentage, and the existing structure square-footage. The overall average lot size is reported as 18,972 square feet of which about 10,166 square feet or 53.58 percent is developable, on average. The subject site is reported as containing 22,003 square feet of lot area, but 9,218 square feet or 41.89 percent of developable lot area due to the additional front yard setback requirements.
- The Transportation Senior Engineer provided a comment sheet indicating no objection to the request (**Attachment A**).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site and all 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:

The subject site is zoned an R-16(A) Single Family District and developed with an approximately 11-foot-tall single-family structure containing 3,335 square feet of floor area. The existing zoning district allows one dwelling unit per lot, allows a maximum floor area ratio for accessory structures of 25 percent of the main structure, prohibits accessory structures to be

taller than the main structure height, and requires a 20-foot setback from right-of-way lines for enclosed parking spaces.

The requests presented would allow for the existing one-story garage structure to be replaced of the size, height, and location desired while adding an additional dwelling unit for non-rent.

The existing main structure height of 11 feet three-inches makes any two-story structure impossible to attain without adding-on atop the main structure itself. The maximum height allowed in an R-16(A) District is 30 feet. The applicant proposes to build a 21-foot four-inch garage/additional dwelling unit structure.

The current detached and enclosed one-car garage is located seven feet from the alley right-of-way line and contains 806 square feet of floor area. The applicant proposes to demolish the existing garage to allow for a new two-story garage structure containing a dwelling unit for non-rent.

The evidence provided by the applicant indicates the existing garage maintains a seven-foot setback to the right-of-way line for the alley. The proposed two-story structure would improve the enclosed garage setback by providing 10 feet, however, still be deficient compared to the requirement of 20 feet.

The proposed site plan denotes two structures:

- the main structure with approximately 3,335 square feet of floor area square feet of floor area, and,
- a proposed two-story garage and office structure or proposed ADU with approximately 1,676 square feet of floor area. The portion of the unit that is counted as floor area is where there is air conditioning. That portion of the structure is 1,039 square feet, or 31.2 percent of the 3,335 square-foot main structure.

The property is slightly irregular in shape, encumbered with two front yards, one of greater depth per the plat, three right-of-way frontages, and several mature trees which, to save, dictate the layout options for the proposed garage addition.

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

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

The board may also consider the new criteria for unnecessary hardship and how they relate to the proposed structure and/or existing main structure constraints.

As of October 8, 2021, staff had not received any letters regarding these requests.

If the board were to grant the special exception to the single-family use regulations, the variance to the floor area regulations for structures accessory to single-family uses, the variance to the height for structures accessory to single-family uses, and the variance to the 20-foot setback from right-of-way line for enclosed parking spaces and impose the submitted site plan and elevation as conditions, the building footprint of the garage/ADU on the site would be limited to what is shown on this document. Furthermore, the Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations. However, granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all other code requirements).

Timeline:

- August 20, 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.
- Sept. 16, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.
- Sept. 17, 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 September 28, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the October 8, 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.
- Sept. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Board of Adjustment Senior

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

October 1, 2021: The Transportation Senior Engineer submitted a comment sheet indicating no objection (**Attachment A**).

October 8, 2021: The applicant submitted additional evidence for the board's review (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: October 20, 2021

APPEARING IN FAVOR: Michael Gooden 3720 Canton #102 Dallas, TX
Peter Koeppel 7240 Mason Dells Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 201-097, on application of Michael Gooden, **grant** the special exception to the single -family use regulations and variances to the height, floor area ratio, and enclosed parking space setback regulations contained in the Dallas Development Code, subject to the following condition(s):

Compliance with the submitted site plan and elevation is required.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Glover, Fleming, Cannon

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Cannon

I move to adjourn the Panel B hearing.

SECONDED: Glover

AYES: 5 – Shouse, Karnowski, Glover, Fleming, Cannon

NAYS: 0 -

MOTION PASSED (unanimously): 5 - 0

The meeting was adjourned at **1:09 P.M. on October 20, 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.