

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL COUNCIL CHAMBERS  
WEDNESDAY, JUNE 20, 2018**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Chair, Ruth Torres, regular member, Marla Beikman, regular member, Philip Sahuc, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Chair, Ruth Torres, regular member, Marla Beikman, regular member, Philip Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/ Board Administrator, Kanesia Williams, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, David Nevarez, Engineering, Phil Erwin, Chief Arborist, Elaine Hill, Board Secretary, Neva Dean, Assistant Director

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/ Board Administrator, Kanesia Williams, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, David Nevarez, Engineering, Elaine Hill, Board Secretary, Neva Dean, Assistant Director

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**10:32 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 20, 2018 docket.**

**BOARD OF ADJUSTMENT ACTION JUNE 20, 2018**

**1:16 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.

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### **MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B April 18, 2018 public hearing minutes.

#### **BOARD OF ADJUSTMENT ACTION: JUNE 20, 2018**

**MOTION:** None

The minutes were approved.

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**FILE NUMBER:** BDA178-061(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Oraldo Guerrero, represented by Karla Calderon, for a special exception to the fence standards regulations at 7203 Benning Avenue. This property is more fully described as Lot 27A, Block 5823, and is zoned R-7.5(A), which prohibits the use of certain materials for a fence. The applicant proposes to construct and/or maintain a fence of a prohibited material, which will require a special exception to the fence standards regulations.

**LOCATION:** 7203 Benning Avenue

**APPLICANT:** Oraldo Guerrero  
Represented by Karla Calderon

#### **REQUEST:**

A request for a special exception to the fence standards regulations is made to maintain a fence of a prohibited fence material (corrugated metal) on a site 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: R-7.5(A) (Single family residential 7,500 square feet)  
North: R-7.5(A) (Single family residential 7,500 square feet)  
South: R-7.5(A) (Single family residential 7,500 square feet)  
East: R-7.5(A) (Single family residential 7,500 square feet)  
West: R-7.5(A) (Single family residential 7,500 square feet)

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

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

- The request for a special exception to the fence standards regulations related to fence materials is made to maintain a fence of a prohibited fence material (corrugated metal) on a site developed with a single-family home.
- Section 51A-4.602(a)(9) of the Dallas Development Code states that except as provided in this subsection, the following fence materials are prohibited:
  - Sheet metal;
  - Corrugated metal;
  - Fiberglass panels;
  - Plywood;
  - Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
  - Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and
  - Barbed wire razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.
- The applicant has submitted a site plan and elevation that represents the location of the existing corrugated metal fence on the property.
- The submitted elevation represents an 8' high corrugated metal fence.
- The submitted site plan represents a site that is approximately 7,500 square feet in area where approximately 226 linear feet of prohibited fence material (corrugated metal fence) is located on this property.

- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area. Several corrugated metal fences were noted within the area.
- As of June 8, 2018, no letters had been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to a prohibited fence material (corrugated metal) will not adversely affect neighboring property.
- If the Board were to grant the special exception and impose the submitted site plan and elevation as a condition, the fence of prohibited material on the property would be limited to what is shown on these documents.

**Timeline:**

March 13, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 13, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant’s representative the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the May 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 11<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: The Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

May 23, 2018: The public hearing in which this application was scheduled was canceled to due lack of quorum of members. This application was rescheduled to be heard by Panel B on June 20, 2018. The Board Administrator emailed the applicant of this cancellation and of this rescheduling.

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION JUNE 20, 2018**

APPEARING IN FAVOR: Karla Calderon, 351 W. Jefferson #750, Dallas, TX

APPEARING IN OPPOSITION: No One

**MOTION: Beikman**

I move that the Board of Adjustment, in Appeal No. BDA 178-061, on application of Oraldo Guerrero, represented by Karla Calderon, **deny** the special exception requested by this applicant to construct and/or maintain a fence of a prohibited material, corrugated metal, without prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

**SECONDED: Sahuc**

AYES: 4 – Hounsel, Torres, Beikman, Sahuc

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

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**FILE NUMBER:** BDA178-068(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Olegario Estrada, represented by Santos T. Martinez of Masterplan, for a special exception to the landscape regulations at 5224 W Jefferson Boulevard. This property is more fully described as Lot 6A, Block 17/8342, and is zoned CR, which requires mandatory landscaping. The applicant proposes to construct/maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 5224 W Jefferson Boulevard

**APPLICANT:** Olegario Estrada  
Represented by Santos T. Martinez of Masterplan

**REQUEST:**

A request for a special exception to the landscape regulations is made to construct and maintain an office use/structure, and not fully meet the landscape regulations, more specifically, the perimeter buffer requirements on the site, and the street tree location requirements along Jefferson Boulevard.

**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; and
- 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 City of Dallas Chief Arborist recommends approval of the alternative landscape plan because strict compliance with the Article X regulations for the street trees and the perimeter landscape buffer will unreasonably burden the use of the property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail)  
North: CR (Community Retail)  
South: R-7.5(A) (Single family residential, 7,500 square feet)  
East: CR (Community Retail)  
West: CR-D (Community Retail)

**Land Use:**

The subject site is undeveloped. The area to the south is developed with single family residential uses; the area to the west is developed with auto service uses; and the areas to the north and east are developed with office/retail uses.

**Zoning/BDA History:**

1. BDA89-023, Property at 5224 W Jefferson Boulevard (subject site)

On June 17, 2009, the Board of Adjustment Panel B granted a request for a side yard variance, front yard variance and a special exception to the landscape regulations and imposed the submitted site plan and alternate landscape plan as a condition.

The case report stated that the request was made to maintain an office use/structure 10' 10" from the side yard setback along S. Bagley Street, 0' along the southern property line, and a special exemption to the required landscape regulations, more specifically, to not provide the landscape buffers adjacent to residential zoned property requirements on the subject site.

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

- This request for a special exception to the landscape regulations focuses on constructing and maintaining an office use/structure, and not fully meeting the landscape regulations, more specifically, not fully providing the perimeter buffer requirements on the site, and the street tree location requirements along Jefferson Boulevard.
- The Dallas Development Code requires full compliance with the landscape regulations when non-permeable 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 a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment B).
- The Chief Arborist's memo states the following with regard to "request":
  - The applicant requests a special exception to the landscape regulations in Article X. Specifically, the applicant requests approval of an alternate landscape plan for a portion of the perimeter buffer and buffer plant material required and the street trees are set further than 30 feet from a curb or edge of street pavement along Jefferson Boulevard.
- The Chief Arborist's memo states the following with regard to "provision":
  - The alternate landscape plan provides all Article X landscape requirements with the exceptions noted below. Irrigation provisions are sufficient to maintain the plants in a healthy growing condition.
- The Chief Arborist's memo states the following with regard to "deficiencies":
  - The property is adjacent to a single family residential district to the south and west. As a result, a perimeter landscape buffer strip of a minimum of 10' width is required along the southern and a portion of the western perimeters. The existing pavement is set to the edge of the property boundary with the exception of the corners of the lot. There is no current screening fence on the lot boundary.
  - Three large trees are indicated along the southern perimeter. The ordinance requires one large tree per 50 feet of perimeter when a screening fence is required. A minimum of 4 trees are required.
  - Street trees are required and provided at one per 50 feet of street frontage but are not placed within 30 feet of the street curb as required. The dimensions and condition of Jefferson Boulevard do not support placing street trees in the public right-of-way to situate required landscaping. The placement of the large trees in the front yard is beneficial and supportive.
- The City of Dallas Chief Arborist recommends approval of the alternative landscape plan because strict compliance with the Article X regulations for the street trees and the perimeter landscape buffer will unreasonably burden the use of the property, noting that if approved, he recommends the plan be subject to approval of screening fence on the perimeter of the lot as required by city ordinance.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property and the special exception will not adversely affect neighboring property.



- 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 exception from fully providing the perimeter buffer and buffer plant material requirements on the site, and street trees requirements along Jefferson Boulevard.
- The request for a special exception to the landscape requirements will not provide any relief to any existing or proposed noncompliance on the site related to off-street parking regulations related to screening.

**Timeline:**

- March 26, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 15, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- May 15, 2018: 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 May 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 31, 2018: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.
- June 7, 2018 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

**BOARD OF ADJUSTMENT ACTION JUNE 20, 2018**

**APPEARING IN FAVOR:** No One

**APPEARING IN OPPOSITION:** No One

**MOTION: Torres**

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

**BDA 178-068** – Application of Olegario Estrada, represented by Santos Martinez, for a special exception to the landscape regulations contained in the Dallas Development Code, as amended, is **granted**, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

**SECONDED: Beikman**

**AYES: 4 – Hounsel, Torres, Beikman, Sahuc**

**NAYS: 0**

**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA178-071(OA)**

**BUILDING OFFICIAL’S REPORT:** Application of Maxwell J. Fisher of Masterplan for special exceptions to the fence standards regulations at 6207 Yorkshire Drive. This property is more fully described as Lot 1, Block 12/6378, and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct/maintain a 7 foot 9 inch high fence in a required front yard, which will require a 3 foot 9 inch special exception to the fence standards regulations, and to construct/maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations.

**LOCATION: 6207 Yorkshire Drive**

**APPLICANT: Maxwell J. Fisher of Masterplan**

**REQUEST:**

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

1. A request for a special exception to the fence standards regulations related to height of 3' 9" is made to maintain a 4' 3" – 7' 9" high solid stucco fence in one of the site's two required front yards (Royalshire Drive); and,
2. A request for a special exception to the fence standards related to fence materials with panels with surface areas that are less than 50 percent open less than 5' from the front lot line is made to maintain the aforementioned 4' 3" – 7' 9" high solid stucco fence along Royalshire Drive located less than 5' from this front lot line.

**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 (fence standards):**

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-16(A) (Single family district 16,000 sq. ft.)  
North: R-16(A) (Single family district 16,000 sq. ft.)  
South: R-16(A) (Single family district 16,000 sq. ft.)  
East: R-16(A) (Single family district 16,000 sq. ft.)  
West: R-16(A) (Single family district 16,000 sq. ft.)

**Land Use:**

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

**Zoning/BDA History:**

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|---|---|
| <ol style="list-style-type: none"> <li>1. BDA 178-023, Property at 6207 Yorkshire Drive (the subject site)</li> </ol> | <p>On February 21, 2018, the Board of Adjustment Panel B denied a request for a special exception to the fence height regulations to construct and maintain an 8' high solid stucco fence in one of the site's two required front yards (Royalshire Drive) on a site that is developed with a single-family home without prejudice.</p> |
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**GENERAL FACTS/STAFF ANALYSIS (fence standards):**

- The requests for special exceptions to the fence standard regulations are twofold. A special exception to the fence standards regulations related to height of 4' is to maintain a 4' 3" – 7' 9" high stucco fence in one of the site's two required front yards (Royalshire Drive). A special exception to the fence standard regulations related to a fence with panels with surface areas less than 50 percent open is made to maintain a 4' 3" – 7' 9" high stucco fence located on Royalshire Drive's front lot line (or less than 5' from this front lot line).
- The subject site is zoned R-16(A).
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is located at the northeast corner of Yorkshire Drive and Royalshire Drive. Regardless of how the structure is proposed to be oriented to front Yorkshire Drive and the site has two required front yards. The site has a 40' required front yard along Yorkshire Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district, and a 20' required front yard along Royalshire Drive, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 4' 3" – 7' 9" high stucco fence would be allowed by right. However, the site's Royalshire Drive frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes north of the site that front/are oriented westward towards Royalshire Drive.
- The applicant has submitted a site plan and elevation of the proposal Royalshire Drive with a fence that reaches up to 7' 9" in height and with fence panels having a surface area that is less than 50 percent open and located less than 5' from this front lot line.
- No part of the application is made to address any fence in the site's Yorkshire Drive required front yard.
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 90' in length parallel to the Royalshire Drive, and approximately 20' perpendicular to Royalshire Drive on the north and south sides of the site in this front yard setback.
  - The proposal is represented as being located approximately on the Royalshire Drive front property line. (The distance between the fence and the pavement line is approximately 12' – 23').
- The submitted site plan and elevation represents that of the fence approximately 122' in length of which approximately 84' of its length is 4' 3" high, and approximately 38' of its length is 7' 9" high.
- The Senior Planner conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of June 8<sup>th</sup>, no letters had been submitted in opposition to the request, and 12 letters had been in support.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height regulation of 3' 9" and to materials/location will not adversely affect neighboring property.

- Granting this special exception of 3' 9" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the Royalshire Drive required front yard to be maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

- April 6, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 15, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case".
- May 15, 2018: 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 May 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 30, 2018: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION JUNE 20, 2018**

**APPEARING IN FAVOR:** Maxwell Fisher, 900 Jackson Street, #640, Dallas, TX,  
Kevin Woodruff, 6206 Yorkshire Drive, Dallas, TX,  
Bob Libbozi, 6207 Yorkshire Drive, Dallas TX

**APPEARING IN OPPOSITION:** No One

**MOTION#1: Torres**

I move that the Board of Adjustment, in Appeal No. BDA 178-071, on application of Maxwell Fisher, **grant** the request of this applicant to construct and/or maintain a seven-foot nine-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.

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

Compliance with the submitted site plan and elevation is required.

**SECONDED: Beikman**

**AYES:** 4- Hounsel, Torres, Beikman, Sahuc

**NAYS:** 0

**MOTION PASSED:** 4 – (unanimously)

**MOTION#2: Torres**

I move that the Board of Adjustment, in Appeal No. BDA 178-071, on application of Maxwell Fisher, **grant** the request of this applicant to complete and maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as a special exception to the surface area openness requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

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

**SECONDED: Sahuc**

**AYES:** 4 – Hounsel, Torres, Beikman, Sahuc

**NAYS:** 0

MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER: BDA178-045(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Virendra Seth for a variance to the front yard setback regulations at 5838 Monticello Avenue. This property is more fully described as Lot 22, Block 8/2153, and is zoned CD 11, which requires a front yard setback of 36 feet. The applicant proposes to construct and/or maintain a structure and provide a 28 foot 6 inch front yard setback, which will require a 7 foot 6 inch variance to the front yard setback regulations.

**LOCATION:** 5838 Monticello Avenue

**APPLICANT:** Virendra Seth

**REQUEST:**

A request for variance to the front yard setback regulations of 7' 6" is made to maintain and to modify/maintain an existing single family home structure, a portion of which is located 28' 6" from the front property line or 7' 6" into the 36' front yard setback. The existing structure in the front yard setback on the subject site is in part a nonconforming structure (steps and single family home structure constructed in the 1920's), and in part an illegal structure (an attached porch structure built in 2016).

**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:**

Denial

Rationale:

- The applicant had not substantiated how the rectangular-shaped, flat, approximately 7,250 square foot subject site cannot be developed in a manner commensurate with the development upon other parcels of land with the same CD 11 zoning district. Other than the part of the existing structure in the CD 11 front yard setback that is assumed to have been built in the 1920's, features of the site have allowed it to be developed with an approximately 2,000 square foot single family home that had complied with front yard setbacks in the previous R-7.5(A) zoning, and as a nonconforming structure in the existing CD 11 zoning.
- Staff concluded that the applicant had not substantiated how if the Board were to grant the variance for an attached porch structure added to the nonconforming structure without a permit in 2016, it would not be to relieve a self-created or personal hardship, nor for financial reasons only.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 11 (Conservation District)  
North: CD 11 (Conservation District)  
South: CD 11 (Conservation District)  
East: CD 11 (Conservation District)  
West: CD 11 (Conservation District)

**Land Use:**

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

**Zoning/BDA History:**

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|--|--|
| 1. BDA178-014, Property at 5838 Monticello Avenue (the subject site) | On February 21, 2018, the Board of Adjustment Panel B denied the applicant's appeal of the decision of an administrative official.   |
| 2. BDA178-015, Property at 5838 Monticello Avenue (the subject site) | On February 21, 2018, the Board of Adjustment Panel B denied a request for a variance to the front yard setback regulations of 7' 6" without prejudice. The case report stated the request was made to maintain and to modify/maintain an existing single family home structure, a portion of which is located 28' 6" from the front property line or 7' 6" into the 36' front yard setback whereby the existing structure on the subject site was in part a nonconforming structure (a step structure constructed in the 1920's), and in part a |



structure that was an illegal structure (a porch structure built in 2016).

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

- The request for a variance to the front yard setback regulations of 7' 6" focuses on: 1) maintaining a nonconforming structure (steps and single family home) constructed in the 1920's, and 2) modifying and maintaining an illegal attached porch structure added to the existing single family home in 2016, both of which are located 28' 6" from the front property line or 7' 6" into the front yard setback.
- The site is located in CD 11 which states that minimum front yard setback is the average of the front yard of the contributing structures on the block face, with the average front yard of contributing main structures block face listed in Exhibit B of the ordinance. (Exhibit B lists that the average setback of the blockface is 36'). Prior to the creation of CD 11 in 2004, the property had been zoned R-7.5(A).
- The submitted scaled site plan indicates the following in the 36' front yard setback: 1) a "new awning over existing built area (5' 6" x 10') located 28' 6" from the front property line, and 2) "existing building footprint" located 34' 1" from the front property line.
- According to DCAD records, the "main improvement" for property addressed at 5838 Monticello Avenue is structure built in 1926 with 2,018 square feet of living/total area, and that "additional improvements" is a 420 square foot attached garage and pool. Because records show that the main improvement/structure on this site was built in the 1920's, it is assumed that the part of the existing structure on the site is a nonconforming structure.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The applicant has chosen to seek variance to the front yard setback regulations for both the nonconforming and illegal structures in the front yard setback.
- The site is flat, rectangular in shape (145' x 50') and 7,250 square feet in area. The site is zoned CD 11; however, the site had been zoned R-7.5(A) where lots are typically 7,500 square feet in area prior to the creation of the CD in 2004.
- 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 CD 11 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 CD 11 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 nonconforming structure (steps and single family home) and an illegal structure (attached porch) that are located as close as 28' 6" from the front property line (or 7' 6" into this 36' front yard setback).
- Granting the front yard variance request will not provide any relief to architectural requirements of CD 11.

**Timeline:**

February 26, 2018: 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 13, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case".

March 13, 2018: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and April 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

March 27, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

April 3, 2018: 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 Building Official, the Assistant Building Official, the Board of

Adjustment Chief Planner/Board Administrator, 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.

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

April 18, 2018: The Board of Adjustment Panel B conducted a public hearing on this application, and delayed action on this application until their next public hearing to be held on May 23, 2018.

April 24, 2018: The Board Administrator wrote the applicant a letter of the board's action; the May 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 11<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

May 1, 4, & 7, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application and at the April public hearing (see Attachments B, C, and D).

May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: The Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

May 23, 2018: The public hearing in which this application was scheduled was canceled to due lack of quorum of members. This application was rescheduled to be heard by Panel B on June 20, 2018. The Board Administrator emailed the applicant of this cancellation and of this rescheduling.

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the

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

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

**BOARD OF ADJUSTMENT ACTION    JUNE 20, 2018**

**APPEARING IN FAVOR:**            Devika Seth, 1305 Normandy Court., Southlake, TX  
V. C Seth, 5838 Monticello Lane., Dallas, TX

**APPEARING IN OPPOSITION:**    No One

**MOTION: Beikman**

I move that the Board of Adjustment, in Appeal No. BDA 178-045, on application of V.C. Seth, **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: Sahuc**  
**AYES: 4 – Hounsel, Torres, Beikman, Sahuc**  
**NAYS: 0**  
**MOTION PASSED: 4 - 0 (unanimously)**

\*\*\*\*\*  
**FILE NUMBER:    BDA178-048(OA)**

**BUILDING OFFICIAL’S REPORT:** Application of Eric Messer for a variance to the front yard setback regulations at 11021 Royalshire Drive. This property is more fully described as Lot 4, Block 3/5500 and is zoned R-16(A), which requires a front yard setback of 35 feet. The applicant proposes to construct and/or maintain a structure and provide a 10-foot front yard setback, which will require a 25-foot variance to the front yard setback regulations.

**LOCATION:**            11021 Royalshire Drive

**APPLICANT:**        Eric Messer

**REQUEST:**

A request for a variance to the front yard setback regulations of 25' is made to construct and maintain a two-story single-family home structure with a total "slab area" of approximately 5,800 square feet or with a total "home size" of approximately 6,100 square feet, part of which is to be located 10' from one of the site's two front property lines (Rex Drive) or 25' into this 35' 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:

- (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-16(A) zoning district in that it is restrictive in area due to having two, 35' front yard setbacks when most lots in this zoning district have one 35' front yard setback. The 95' wide subject site has 50' of developable width available once a 35' front yard setback is accounted for on the north and a 10' side yard setback is accounted for on the south. If the lot were more typical to others in the zoning district with only one front yard setback, the 95' wide site would have 75' of developable width.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that that the total home size of the proposed home on the subject site at approximately 6,100 square feet is commensurate to 31 other homes in the same R-16(A) zoning district that have average home size of approximately 6,400 square feet.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16(A) (Single family district 16000 square-feet)  
North: R-16(A) (Single family district 16000 square-feet)  
South: R-16(A) (Single family district 16000 square-feet)  
East: R-16(A) (Single family district 16000 square-feet)  
West: R-16(A) (Single family district 16000 square-feet)

## **Land Use:**

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

## **Zoning/BDA History:**

1. BDA 167-076, Property at 6143 Royalton Drive (Property located one block south of subject site)

On August 14, 2017, the Board of Adjustment Panel C denied requests for variances to the front yard setback regulations made to construct and maintain a single-family structure in the front yard setbacks on one of the site's two front property lines (Azalea Drive).

The case report stated the request was made to construct and maintain a single-family structure, part of which would be located 14' from the site's front property line) or 21' into the 35' front yard setback along Azalea Lane.

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

- This request for variance to the front yard setback requirement of 25' focuses on constructing and maintaining a two-story single family home structure with a total "slab area" of approximately 5,800 square feet or with a total "home size" of approximately 6,100 square feet, part of which is to be located 10' from one of the site's two front property lines (Rex Drive) or 25' into this 35' front yard setback on a site that is undeveloped.
- The property is located in an R-16(A) zoning district which requires a minimum front yard setback of 35 feet.
- The subject site is located at the southwest corner of Royalshire Drive and Rex Drive. Regardless of how the structure is proposed to be oriented to front Royalshire Drive, the subject site has a 35' front yard setback along both street frontages. The site has a 35' front yard setback along Royalshire Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 35' front yard setback along Rex Drive, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 10' side yard setback is required. However, the site's Rex Drive 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 established front yard setback established by the lots to the west that front/are oriented northward towards Rex Drive.
- The submitted site plan indicates the proposed structure is located 10' from the Rex Drive's front property line or 25' into this 35' front yard setback.
- According to DCAD records, there are "no main improvement" or "no additional improvements for property addressed at 11021 Royalshire Drive.

- The subject site is flat, rectangular in shape (approximately 160' x 95'), and according to the submitted application is 0.348 acres (or approximately 15,200 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- Most lots in the R-16(A) zoning district have one 35' front yard setback, two 10' side yard setbacks, and one 10' rear yard setback; this site has two 35' front yard setbacks and two 10' side yard setbacks.
- The site plan represents that approximately 1/3 of the structure is located in the 35' Rex Drive front yard setback.
- The 95' wide subject site has 50' of developable width available once a 35' front yard setback is accounted for on the north and a 10' side yard setback is accounted for on the south. If the lot were more typical to others in the zoning district with only one front yard setback, the 95' wide site would have 75' of developable width.
- No variance would be necessary if the Rex Drive frontage were a side yard since the site plan represents that the proposed home is 10' from the Rex Drive property line and the side yard setback for properties zoned R-16(A) is 10'.
- The applicant has submitted a document indicating among other things that that the total home size of the proposed home on the subject site is approximately 6100 square feet, and the average of 31 other properties in the same zoning is approximately 6,400 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-16(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-16(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 10' from the site's Rex Drive front property line (or 25' into this 35' front yard setback).

**Timeline:**

February 20, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 11, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.



- April 12, 2018: 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 May 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 11<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- April 25, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- May 1, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.
- May 23, 2018: The public hearing in which this application was scheduled was canceled due to lack of quorum of members. This application was rescheduled to be heard by Panel B on June 20, 2018. The Board Administrator emailed the applicant of this cancellation and of this rescheduling.
- June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and

Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

**MOTION: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 178-048, hold this matter under advisement until August 22, 2018.

APPEARING IN FAVOR: Eric Messer, 6312 Widgeon Dr., Plano, TX

APPEARING IN OPPOSITION: Aimee Fagan, 6206 Rex Dr., Dallas, TX  
David Weltman, 6126 Rex Dr., Dallas, TX

SECOND: Torres  
AYES: 3 - Hounsel, Torres, Sahuc  
NAYS: 1 - Beikman  
MOTION PASSED: 3 – 1

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FILE NUMBER: BDA178-055(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Robert Reeves and Associates, represented by Robert Reeves, for a special exception to the off-street parking regulations at 13907 Noel Road. This property is more fully described as Lot 1B, Block A/7005, and is zoned MU-3(SAH), which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for hotel or motel use, general merchandise or food store 3500 square feet or less use, and an animal shelter or clinic without outside runs uses and provide 236 of the required 270 of-street parking spaces, which will require a 34-space special exception to the off-street parking regulations.

**LOCATION:** 13907 Noel Road

**APPLICANT:** Robert Reeves and Associates  
Represented by Robert Reeves

**REQUEST:**

A request for a special exception to the off-street parking regulations of 34 spaces is made to construct and maintain a structure with a mix of hotel or motel, general merchandise or food store 3,500 square feet or less, animal shelter or clinic without outside runs uses where 236 of the required 270 spaces are proposed to be provided on a site that is currently undeveloped.

## **STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

Section 51A-4.311 of the Dallas Development Code states the following:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.

- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception of 34 spaces shall automatically and immediately terminate if and when the hotel or motel, general merchandise or food store 3,500 square feet or less, animal shelter or clinic without outside runs uses are changed or discontinued.

Rationale:

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

**BACKGROUND INFORMATION:**

**Zoning:**

Site: MU-3(SAH) (Deed restricted) \* (Mixed use)  
North: GO(A)(SAH) (Deed restricted) (General Office)  
South: PD 887 (Planned Development)  
East: PD 216 (Planned Development)  
West: MU-3(SAH) (Mixed use)

- \* Note that in January of 2018, the same applicant who filed an application to the Board of Adjustment at this time on this site for variances to front yard, side yard, loading regulations, and a similar requests for a special exception to off-street parking regulations for the same uses applied for in this application, represented in an email to the Board Administrator/Chief Planner that the deed restrictions on this property in no way conflicted with the requests made to the board of adjustment on that application (BDA178-020).

**Land Use:**

The subject site is undeveloped. The areas to the north is developed with a hotel use; the area to the east is developed with multifamily use; the area to the south is developed with an office use, and the area to the west is developed with retail use.\

**Zoning/BDA History:**

1. BDA178-020, Property at 13907 Noel Road (the subject site)

On February 21, 2018, the Board of Adjustment Panel B denied requests for variances to the front and side yard setback regulations, a variance to the off-street loading regulations, and a special exception to the off-street parking regulations of 33 spaces without prejudice.

The case report stated that the requests were made to construct and maintain a 6-story, approximately 72' high, approximately 170,000 square foot mixed structure (hotel or motel use, general merchandise or food store 3,500 square feet or less use, animal shelter or clinic without outside runs use) (Plush Galleria Hotel) on a site that was currently undeveloped.

2. BDA990-372, Property at 13907 Noel Road (the subject site)

On December 6, 2000, the Board of Adjustment Panel B granted a request for a special exception to the off-street parking regulations of 6 spaces and imposed the following condition: the special exception granted automatically and immediately terminates if and when the retail and restaurant uses on the site are changed or discontinued.

The case report stated that the request was made to construct and maintain a retail development and restaurant on the undeveloped site and provide 95 of the required 101 off-street parking spaces required by code.

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

- This request for a special exception to the off-street parking regulations of 34 spaces focuses on constructing and maintaining a structure with a mix of hotel or motel (a 236 room hotel), general merchandise or food store 3,500 square feet or less (1,800 square feet of retail use), animal shelter or clinic without outside runs (7,300 square foot "doggy day care") uses, and providing 236 (or 87 percent) of the 270 off-street parking spaces required by code.
- Chapter 51A requires the following off-street parking requirement:

- Hotel or motel: one space for each unit for units 1 to 250;  $\frac{3}{4}$  space for each unit for units 251 to 500,  $\frac{1}{2}$  space for each unit for all units over 500; plus, one space per 200 square feet of meeting room.
- General merchandise or food store 3,500 square feet or less: one space per 200 square feet of floor area.
- Animal shelter or clinic: One space per 300 square feet of floor area.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed hotel or motel, general merchandise or food store 3,500 square feet or less, animal shelter or clinic without outside runs uses does not warrant the number of off-street parking spaces required, and
  - The special exception of 34 spaces (or a 13 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 34 spaces shall automatically and immediately terminate if and when the hotel or motel, general merchandise or food store 3,500 square feet or less, animal shelter or clinic without outside runs uses are changed or discontinued, the applicant could develop the site with a structure with these uses, and provide 236 (or 87 percent) of the 270 required off-street parking spaces.

**Timeline:**

- March 8, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 10, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.
- April 10, 2018: 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 May 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 11<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: The Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

May 9, 2018: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Has no objections".

May 23, 2018: The public hearing in which this application was scheduled was canceled to due lack of quorum of members. This application was rescheduled to be heard by Panel B on June 20, 2018. The Board Administrator emailed the applicant of this cancellation and of this rescheduling.

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

APPEARING IN FAVOR: Robert Reeves, 900 Jackson Street, Dallas, TX  
Jon Lambert, 3990 Vitruvion Way, Addison, TX  
Scot Johnson, 13455 Noel Road, Dallas, TX

APPEARING IN OPPOSITION: Mitchell Vexler, 13651 Noel Road, Dallas, TX

MOTION: **Hounsel**

MOTION #1: Hounsel

To suspend the rules to accept more than 5 pages to case #BDA178-055(SL)

SECOND: **Beikman**

AYES: 4 – Hounsel, Torres, Beikman, Sahuc

NAYS: 0  
MOTION PASSED: 4 – 0

MOTION: **Sahuc**

I move that the Board of Adjustment, in Appeal No. BDA 178-055, on application of Robert Reeves, **grant** the request of this applicant to provide 236 off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code, as amended, which require 270 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for a hotel or motel, general merchandise or food store 3500 square feet or less, and an animal shelter or clinic without outside run uses only.

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

1. The special exception of 34 spaces shall automatically and immediately terminate if and when the hotel or motel, general merchandise or food store 3500 square feet or less, animal shelter or clinic without outside run uses are changed or discontinued.
2. Reassessment of the parking study due to city staff by June 20, 2021 is required.

SECONDED: **Torres**

AYES: 4 - Hounsel, Torres, Beikman, Sahuc

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER: BDA178-060(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Jorge Rojas, represented by Karla Calderon, for a special exception to the fence standards regulations at 2907 Canberra Street. This property is more fully described as Lot 34, Block 18/5975, and is zoned R-7.5(A), which prohibits the use of certain materials for a fence. The applicant proposes to construct and/or maintain a fence of a prohibited material, which will require a special exception to the fence standards regulations.

LOCATION: 2907 Canberra Street

APPLICANT: Jorge Rojas  
Represented by Karla Calderon

**REQUEST:**

A request for a special exception to the fence standards regulations is made to maintain a fence of a prohibited fence material (corrugated metal) on a site 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: R-7.5(A) (Single family residential 7,500 square feet)  
North: R-7.5(A) (Single family residential 7,500 square feet)  
South: R-7.5(A) (Single family residential 7,500 square feet)  
East: R-7.5(A) (Single family residential 7,500 square feet)  
West: R-7.5(A) (Single family residential 7,500 square feet)

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

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

- The request for a special exception to the fence standards regulations related to fence materials is made maintain a fence of a prohibited fence material (corrugated metal) on a site developed with a single-family home.
- Section 51A-4.602(a)(9) of the Dallas Development Code states that except as provided in this subsection, the following fence materials are prohibited:
  - Sheet metal;
  - Corrugated metal;
  - Fiberglass panels;
  - Plywood;
  - Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
  - Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and

- Barbed wire razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.
- The applicant has submitted a site plan and elevation that represents the location of the existing corrugated metal fence on the property.
- The submitted elevation represents an 8’ high corrugated metal fence.
- The submitted site plan represents a site that is approximately 8,000 square feet in area where approximately 205 linear feet of prohibited fence material (corrugated metal fence) is located on this property.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area. Several corrugated metal fences were noted within the area.
- As of June 8, 2018, 1 letter had been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to a prohibited fence material (corrugated metal) will not adversely affect neighboring property.
- If the Board were to grant the special exception and impose the submitted site plan and elevation as a condition, the fence of prohibited material on the property would be limited to what is shown on these documents.

**Timeline:**

- March 13, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 13, 2018: The Sustainable Development and Construction Department Senior Planner, emailed the applicant’s representative the following information:
- a copy of the application materials including the Building Official’s report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the May 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 11<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: The Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the

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

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

May 23, 2018: The public hearing in which this application was scheduled was canceled to due lack of quorum of members. This application was rescheduled to be heard by Panel B on June 20, 2018. The Board Administrator emailed the applicant of this cancellation and of this rescheduling.

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

APPEARING IN FAVOR: Karla Calderon, 351 W. Jefferson, #750, Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION #1: **Sahuc**

I move that the Board of Adjustment, in Appeal No. BDA 178-060, on application of Jorge Rojas, represented by Karla Calderon, **deny** the special exception requested by this applicant to construct and/or maintain a fence of a prohibited material, corrugated metal, without prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECOND: **Beikman**

AYES: 1 – Sahuc

NAYS: 2 – Hounsel, Torres, Beikman

MOTION FAILED: 1 - 3

**MOTION #2: Beikman**

I move that the Board of Adjustment, in Appeal No. BDA 178-060, on application of Jorge Rojas, represented by Karla Calderon, **grant** the request of this applicant to construct and/or maintain a fence of a prohibited material, corrugated metal, as a special exception to the materials requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

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

**SECOND: Torres**

**AYES:** 4 – Hounsel, Torres, Beikman, Sahuc

**NAY:** 0

**MOTION PASSED:** 4 – 0 (unanimously)

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**FILE NUMBER:** BDA178-063(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Ricardo Alonso-Carrillo for a variance to the front yard setback regulations at 3802 Carl Street. This property is more fully described as Tract 1, Block 1813, and is zoned PD 595 R-5(A), which requires a front yard setback of 20 feet. The applicant proposes to construct/maintain a structure and provide a 5-foot front yard setback, which will require a 15 foot variance to the front yard setback regulations.

**LOCATION:** 3802 Carl Street

**APPLICANT:** Ricardo Alonzo-Carrillo

**REQUEST:**

A request for a variance to the front yard setback regulations of 15’ is made to construct and maintain a one-story single family home structure with a total “slab area” of approximately 1,800 square feet or with a total “living area” of approximately 1,400 square feet, part of which is to be located 5’ from one of the site’s two front property lines (Cross Street) or 15’ into this 20’ 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:

- (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:**

Denial

Rationale:

- While staff recognized that the site had two front yard setbacks, staff concluded that the applicant had not substantiated how 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 it cannot be developed in a manner commensurate with the development upon other parcels of land with the same PD 595 (R-5(A)) zoning district.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 595 (R-5(A)) (Single family district 5,000 square-feet)  
North: PD 595 (R-5(A)) (Single family district 5,000 square-feet)  
South: PD 595 (R-5(A)) (Single family district 5,000 square-feet)  
East: PD 595 (R-5(A)) (Single family district 5,000 square-feet)  
West: PD (595 R-5(A)) (Single family district 5,000 square-feet)

**Land Use:**

The subject site is undeveloped. The areas to the northeast and southwest are undeveloped single-family lots; and the areas to the northwest and southeast are developed with single family uses.

**Zoning/BDA History:**

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

**GENERAL FACTS /STAFF ANALYSIS:**

- This request, for variance to the front yard setback regulations of 15' focuses on constructing and maintaining a one-story single family home structure with a total "slab area" of approximately 1,800 square feet or with a total "living area" of approximately 1,400 square feet, part of which is to be located 5' from one of the site's two front property lines (Cross Street) or 15' into this 20' front yard setback on an undeveloped site.
- The property is located in a PD 595 (R-5(A)) (Single family district 5,000 square-foot) zoning district which requires a minimum front yard setback of 20 feet.
- The subject site is located at the southeast corner of Carl Street and Cross Street. Regardless of how the structure is proposed to be oriented to front Carl Street, the subject site has 20' front yard setbacks along both street frontages. The site has a 20' front yard setback along Carl Street, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 20' front yard setback along Cross Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. However, the site's Cross 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 established front yard setback established by the lot to the southeast that fronts/is oriented southwest towards Cross Street.
- The submitted site plan indicates that the proposed structure is located 5' from the Cross Street front property line or 15' into this 20' front yard setback.
- According to DCAD records, there are "no main improvement" or "no additional improvements for property addressed at 3802 Carl Street.
- The subject site is flat, rectangular in shape (approximately 125' x 50'), and according to the submitted application is 0.13 acres (or approximately 6,250 square feet) in area. The site is zoned PD 595 (R-5(A)) where lots are typically 5,000 square feet in area.
- The site plan represents that approximately 1/3 of the structure is located in the 20' Cross Street front yard setback.
- The 50' wide subject site has 25' of developable width available once a 20' front yard setback is accounted for on the southwest and a 5' side yard setback is accounted for on the northeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width.
- No variance would be necessary if the Cross-Street frontage were a side yard since the site plan represents that the proposed home is 5' from the Cross-Street property line and the side yard setback for properties zoned PD 595 (R-5(A)) is 5'.
- 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 PD 595 (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 PD 595 (R-5(A)) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 5’ from the site’s Cross Street front property line (or 15’ into this 20’ front yard setback).

**Timeline:**

March 23, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 15, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 15, 2018: 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 May 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

APPEARING IN FAVOR: Ricardo Alonso-Carrillo, 10000 N. Central Expwy,  
#452

APPEARING IN OPPOSITION: No One

MOTION: **Sahuc**

I move that the Board of Adjustment, in Appeal No. BDA 178-063, on application of Ricardo Alonzo-Carrillo, **grant** the 15-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

- Compliance with the submitted site plan is required.

SECOND: **Beikman**

AYES: 4 – Housel, Torres, Beikman, Sahuc

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER: BDA178-070(SL)

**BUILDING OFFICIAL'S REPORT:** Application of James Poulin, represented by Curtis Burlbaw, for variances to the front yard setback and off-street parking regulations at 2016 Kessler Parkway. This property is more fully described as Lot D-1, Block 13/3800 and is zoned CD 13, which requires a front yard setback of 35 feet and requires a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located 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/maintain structure and provide a 16-foot front yard setback, which will require a 19-foot variance to the front yard setback regulations, and to locate and maintain parking spaces in an enclosed structure with a setback of 16 feet, which will require a variance of 4 feet to the off-street parking regulations.

LOCATION: 2016 Kessler Parkway

APPLICANT: James Poulin  
Represented by Curtis Burlbaw

**REQUESTS:**

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



1. a variance to the front yard setback regulations of 19' is requested to construct and maintain the aforementioned structure 16' from the front property line or 19' into the required 35' front yard setback;
2. a variance to the off-street parking regulations of 4' is requested as the proposed home would have parking spaces in an enclosed structure (an attached garage) that would be located 16' from the right-of-way line adjacent to the street or as much as 4' into the required 20' distance from the right-of-way line adjacent to Kessler Parkway.

**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 (front setback variance):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the lot's restrictive area caused by the slope precludes it from being developed in a manner commensurate with the development upon other parcels of land that are flat/without slope on similarly-zoned CD 13 (Subarea 3) lots. The applicant's representative has submitted a document indicating that that the total "maximum AC space" of the proposed home on the subject site is approximately 3,000 square feet which is smaller than that of 22 other homes he listed of properties in the same CD 13 (Subarea 3) zoning. (The average square footage of 22 other properties listed in the applicant's document is approximately 3,300 square feet).

**STAFF RECOMMENDATION (off-street parking variance):**

Approval, subject to the following conditions:

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

Rationale:

- Staff concluded that the lot's restrictive area caused by the slope of the site precludes it from being developed in a manner commensurate with the development upon other parcels of land that are flat/without slope on similarly-zoned CD 13 (Subarea 3) lots. The applicant's representative has submitted a document indicating that the total "maximum AC space" of the proposed home on the subject site is approximately 3,000 square feet which is smaller than that of 22 other homes he listed of properties in the same CD 13 (Subarea 3) zoning. (The average square footage of 22 other properties listed in the applicant's document is approximately 3,300 square feet).
- Granting this request is not contrary to the public interest in that the Sustainable Development and Construction Senior Engineer has no objections to the request given the distance between the pavement line and building footprint.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 13 (Subarea 3) (Conservation District)  
North: CD 13 (Subarea 4) (Conservation District)  
South: CD 13 (Subarea 3) (Conservation District)  
East: CD 13 (Subarea 3) (Conservation District)  
West: CD 13 (Subarea 3) (Conservation District)

**Land Use:**

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

## **Zoning/BDA History:**

1. BDA178-033, Property at 2016 Kessler Parkway (the subject site)

On March 21, 2018, the Board of Adjustment Panel B denied requests variances to the front yard setback regulations of 19' and off-street parking regulations of 4' without prejudice.

The case report stated the following: a variance to the front yard setback regulations of 19' was requested to construct and maintain the aforementioned structure 16' from the front property line or 19' into the required 35' front yard setback; and that a variance to the off-street parking regulations of 4' was requested as the proposed home would have parking spaces in an enclosed structure (an attached garage) that would be located 16' from the right-of-way line adjacent to the street or as much as 4' into the required 20' distance from the right-of-way line adjacent to Kessler Parkway

## **GENERAL FACTS/STAFF ANALYSIS (front yard variance):**

- This request for a variance to the front yard setback regulations focuses on constructing and maintaining a two-story, single family home with approximately 3,000 square feet of AC space on an undeveloped site that is proposed to be located 16' from the front property line or 19' into the site's 35' front yard setback.
- The subject site is zoned CD 13 (Subarea 3).
- CD 13 states that the minimum front yard must equal the average of the front yards of the houses on contiguous lots.
- The applicant has submitted a document that represents the location and setbacks of the houses to the east and west of the subject site (see Attachment B).
- The submitted plan represents that the single-family home structure is located 16' from the site's front property line (or 19' into the 35' front yard setback).
- The site plan shows that over half of the proposed building footprint is to be located in the site's 35' front yard setback.
- DCAD records indicate "no main improvements" for the property at 2016 Kessler Parkway.

- The applicant's representative has submitted a document indicating that the total "maximum AC space" of the proposed home on the subject site is approximately 3,000 square feet which is smaller than that of 22 other homes he listed of properties in the same CD 13 (Subarea 3) zoning. (The average square footage of 22 other properties listed in the applicant's document is approximately 3,300 square feet).
- The applicant has submitted a topographic representation of the site indicating a slope in approximately the southern half of the subject site – a slope beginning at 460' up to 490' over a length of approximately 60'. The topographic representation includes a note pointing to an area of the building footprint: "Shaded area represents buildable area in escarpment as defined by City of Dallas Engineering Department beyond the 35' front yard setback".
- A document has been submitted that represents the proposed building footprint and the topographic lines on the site with an approximate 8' – 25' range of distance between the 35' setback line and the slope beginning on roughly the southern half of the property.
- The submitted site/roof plan represents the proposed building footprint with "unshaded area represents buildable area in the escarpment as defined by City of Dallas Engineering Department in front of the 35' front yard setback (i.e. the area requested for variance)" and "shaded area represents remaining buildable area in the escarpment as defined by City of Dallas Engineering Department beyond the 35' front yard setback" (see Attachment D).
- The subject site is sloped, slightly irregular in shape, and approximately 12,000 square feet in area. Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned R-7.5(A) where the typical lot size is 7,500 square feet and where the front yard setback was 25'.
- 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 CD 13 (Subarea 3) zoning classification.
  - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 13 (Subarea 3) zoning classification.
- If the Board were to grant this 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 is a structure to be located 16' from the site's front property line or 19' into the required 35' front yard setback.

**GENERAL FACTS/STAFF ANALYSIS (parking variance):**

- This request for a variance to the off-street parking regulations of 4' focuses on locating parking spaces in an enclosed structure (a garage attached/within the proposed single family home), where these parking spaces entered from the street right-of-way line would be located 16' from the Kessler Parkway street right-of-way line or 4' into the required 20' distance from this 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 the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The submitted site plan denotes the location of parking spaces in the enclosed structure 16' from the street right-of-way line or 4' into the 20' setback line that an enclosed parking space must be from this right-of-way line. (The submitted site plan represents that the parking spaces in the enclosed structure are approximately 46' from the Kessler Parkway pavement line).
- DCAD records indicate "no main improvements" for the property at 2016 Kessler Parkway.
- The applicant's representative has submitted a document indicating that that the total "maximum AC space" of the proposed home on the subject site is approximately 3,000 square feet which is smaller than that of 22 other homes he listed of properties in the same CD 13 (Subarea 3) zoning. (The average square footage of 22 other properties listed in the applicant's document is approximately 3,300 square feet).
- The subject site is sloped, slightly irregular in shape, and is approximately 12,000 square feet in area. Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned R-7.5(A) where the typical lot size is 7,500 square feet.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked "Has no objections" given the distance between the pavement and the building footprint".
- 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 in districts with the same CD 13 (Subarea 3) zoning classification.
  - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 13 (Subarea 3) zoning classification.
- If the Board were to grant the request for a variance of 4', 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.

(These conditions are imposed to help assure that the variance will not be contrary to the public interest).

**Timeline:**

March 29, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 15, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.

May 15, 2018: 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 May 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 24 & 31, 2018 The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

June 5, 2018: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official’s report to the Board Administrator (see Attachment C).

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized

Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

June 7, 2018 The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment D).

June 8, 2018: The Sustainable Development and Construction Senior Engineer forwarded documents to the Board Administrator/Chief Planner (see Attachment E).

APPEARING IN FAVOR: Curtis Burbaw, 16 Bishop Gate, Allen, TX  
Tom Cusick, 13901 Midway Rd., Dallas, TX

APPEARING IN OPPOSITION: Jerry Sanchez, 1218 N. Clinton, Dallas, TX  
Sara Redy, 2010 Kessler Pkwy., Dallas TX  
Michael Holmes, 1026 N. Winnetka Ave.,  
Dallas, TX  
Robert D'Avignon, 1153 N. Canterbury Ct.  
Dallas, TX  
L. B. McNally, 2100 Kessler Pkwy., Dallas, TX

MOTION #1: **Torres**

I move that the Board of Adjustment, in Appeal No. BDA 178-070, on application of James Poulin represented by Curtis Burlbaw, **grant** the 19-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

- Compliance with the submitted site plan is required.

SECOND: **Sahuc**

AYES: 4 – Hounsel, Torres, Beikman, Sahuc

NAY: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION #2: **Sahuc**

I move that the Board of Adjustment, in Appeal No. BDA 178-070, on application of James Poulin represented by Curtis Burlbaw, **grant** the four-foot variance to the off-street parking regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

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

**SECOND: Torres**

**AYES:** 4 – Hounsel, Torres, Beikman, Sahuc

**NAY:** 0

**MOTION PASSED:** 4 – 0 (unanimously)

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**FILE NUMBER:** BDA178-076(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Ricardo Alonzo-Carrillo for a variance to the front yard setback regulations at 4406 N. Ottawa Road. This property is more fully described as Lot 13, Block 17/7161, and is zoned R-5(A), which requires a front yard setback of 20 feet. The applicant proposes to construct/maintain a structure and provide a 12-foot 5 inch front yard setback, which will require a 7 foot 7 inch variance to the front yard setback regulations.

**LOCATION:** 4406 N. Ottawa Road

**APPLICANT:** Ricardo Alonso-Carrillo

**REQUEST:**

A request for a variance to the front yard setback regulations of 7’ 7” is made to construct and maintain a one-story single family home structure with a total “slab area” of approximately 2,600 square feet or with a total “home size” of approximately 1,900 square feet, part of which is to be located 12’ 5” from one of the site’s two front property lines (N. Ottawa Road) or 7’ 7” into this 20’ 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:

- (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:**

Denial

Rationale:

- While staff recognized that the site had two front yard setbacks and was slightly irregular in shape, staff concluded that the applicant had not substantiated how 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 it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-5(A) zoning district.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-5(A) (Single family district 5,000 square-feet)  
North: R-5(A) (Single family district 5,000 square-feet)  
South: R-5(A) (Single family district 5,000 square-feet)  
East: R-5(A) (Single family district 5,000 square-feet)  
West: R-5(A) (Single family district 5,000 square-feet)

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS /STAFF ANALYSIS:**

- This request for a variance to the front yard setback regulations of 7' 7" focuses on constructing and maintaining a one-story single family home structure with a total "slab area" of approximately 2,600 square feet or with a total "home size" of approximately 1,900 square feet, part of which is to be located 12' 5" from one of the site's two front property lines (N. Ottawa Road) or 7' 7" into this 20' front yard setback on an undeveloped site.
- The property is located in an R-5(A) (Single family district 5,000 square-feet) zoning district which requires a minimum front yard setback of 20 feet.
- The property is located in a 100-year floodplain.

- The subject site is located at the southwest corner of S. Ottawa Road and N. Ottawa Road. Regardless of how the structure is proposed to be oriented to front S. Ottawa Road, the subject site has 20' front yard setbacks along both street frontages. The site has a 20' front yard setback along S. Ottawa Road, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 20' front yard setback along N. Ottawa Road, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. However, the site's N. Ottawa Road 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 established front yard setback established by the lots to the west that front/are oriented northward towards N. Ottawa Road.
- The submitted site plan indicates that the wall of the proposed structure is located 12' 5" from the N. Ottawa Road front property line or 7' 7" into this 20' front yard setback on N. Ottawa Road to establish a 12' 5" setback.
- According to DCAD records, there are "no main improvement" or "no additional improvements for property addressed at 4406 N. Ottawa Road.
- The subject site has generally flat, slightly irregular in shape (approximately 130' x 53'), and according to the submitted application is 0.173 acres (or approximately 6,890 square feet) in area. The site is zoned R-5(A) where lots are typically 5,000 square feet in area and the property is located in a 100-year floodplain.
- The site plan represents that approximately 1/5 of the structure is located in the 20' N Ottawa Road front yard setback.
- The 53' wide subject site has 28' of developable width available once a 25' front yard setback is accounted for on the north and a 5' side yard setback is accounted for on the south. If the lot were more typical to others in the zoning district with only one front yard setback, the 53' wide site would have 43' of developable width.
- No variance would be necessary if the N. Ottawa Road frontage were a side yard since the site plan represents that the proposed home is 12' 5" from the N. Ottawa Road property line and the side yard setback for properties zoned R-5(A) is 5'.
- 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-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 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 12'

5” from the site’s N. Ottawa Road front property line (or 7’ 7” into this 20’ front yard setback).

- Granting this request for a variance to the front yard setback regulations would provide no relief to the Flood Plain regulations on the site.

**Timeline:**

March 23, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 15, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 15, 2018: 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 May 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

**APPEARING IN FAVOR:** Ricardo Alonso Carrillo, 10000 N.Central Expwy, #452

**APPEARING IN OPPOSITION:** No One

**MOTION: Beikman**

I move that the Board of Adjustment, in Appeal No. BDA 178-076, on application of Ricardo Alonzo-Carrillo, **grant** the seven-foot seven-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

- Compliance with the submitted site plan is required.

**SECOND: Torres**

**AYES:** 4 – Hounsel, Torres, Beikman, Sahuc

**NAYS:** 0

**MOTION PASSED:** 4 -0 (unanimously)

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**MOTION: Beikman**

I move to adjourn this meeting.

**SECONDED: Hounsel**

**AYES:** 4 – Torres, Beikman, Shouse, Sahuc

**NAYS:** 0

**MOTION PASSED:** 4 – 0 (unanimously)

**5:43 P.M.** Board Meeting adjourned for **June 20, 2018**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

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

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