

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, November 13, 2018**

MEMBERS PRESENT AT BRIEFING: Elizabeth Nelson, regular member, Jay Narey, regular member Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Pete Schulte, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist and Elaine Hill, Board Secretary

MEMBERS PRESENT AT HEARING: Peter Schulte, Chair, Elizabeth Nelson, regular member, Jay Narey, regular member Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No One

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist and Elaine Hill, Board Secretary

**11:04 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 12, 2018** docket.

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**1:10 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**

Approval of the Board of Adjustment Panel A, September 18 public hearing minutes.

Approval of Panel A's 2019 Public Hearing Calendar.

**BOARD OF ADJUSTMENT ACTION: September 18, 2018**

MOTION: None

The minutes and 2019 Public Hearing calendar were approved without a formal vote.

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**FILE NUMBER:** BDA178-106(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Jean-Claude Saada, represented by Francis A. Sapienza, Jr., for a special exception to the fence standards regulations at 5411 Surrey Circle. This property is more fully described as Lot 10&11, Block B/5665, and is zoned R-16(A), which 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 and/or 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:** 5411 Surrey Circle

**APPLICANT:** Jean-Claude Saada  
Represented by Francis A. Sapienza, Jr.

**REQUEST:**

A request for a special exception to the fence standards regulations related to a fence panel with a surface area that is less than 50 percent open is made to construct and maintain a 4’ high solid board-on-board wood fence located on the front lot line (or 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:**

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 square feet)

North: R-16(A) (Single family district 16,000 square feet)

South: R-16(A) (Single family district 16,000 square feet)

East: R-16(A) (Single family district 16,000 square feet)  
West: R-16(A) (Single family district 16,000 square feet)

**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 uses.*

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a 4' high solid board-on-board wood fence located on the front lot line (or less than 5' from this front lot line).
- The subject site is zoned R-16(A) which requires a 35' front yard setback.
- The Dallas Development Code states that no fence panel having less than 50 percent open surface area may be located less than five feet from the front lot line.
- The applicant has submitted a site plan and elevation of the proposal along the front property line with fence panels having a surface area that is less than 50 percent open and located less than 5' from this front lot line.
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 20' in length parallel to Surrey Crile and approximately 15' perpendicular (at both ends of the 20' long fence) to Surrey Crile on the southeast side of the site in this front yard setback.
- The proposal is represented as being located at the Surrey Crile front property line or approximately 15' from the pavement line.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and noted no similar fences to be located on the front lot line.
- As of October 5, 2018, three letters had been submitted in support of the request and no letters had been submitted in opposition (see Attachment A).
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to a fence with panels with surface areas less than 50 percent open less than 5' from the front lot line will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line to be maintained in the location and materials as shown on these documents.

**Timeline:**

July 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.

September 11, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel A.

September 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<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."

September 13, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: October 16, 2018**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Schulte**

I move to **grant** the Board of Adjustment application **BDA178-106** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code,

as applicable, to wit. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Nelson**

**AYES:** 5 – Schulte, Nelson, Narey, Sibley

**NAYS:** 0

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

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**FILE NUMBER:** BDA178-109(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Tom Persch, represented by Kori Haug, for a special exception to the landscape regulations at 1919 McKinney Avenue. This property is more fully described as Lot 1A, Block A/358, and is zoned PD 193 (HC), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 1919 McKinney Avenue

**APPLICANT:** Tom Persch  
Represented by Kori Haug

**REQUEST:**

A request for a special exception to the landscape regulations is made to remodel and maintain a commercial/office use/structure, and not fully meet the landscape regulations, more specifically, to not meet street tree and sidewalk requirements on the subject site.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:**

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit, and that the property complies with a landscape plan as a condition to granting the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted revised alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the revised alternate landscape plan because the plan meets the spirit and intent of the PD 193(HC)

landscape regulations, and the established site conditions limit the ability to conform to current standards without full redevelopment of the property.

**BACKGROUND INFORMATION:**

- Site: PD 193 (HC) (Planned Development, Heavy Commercial)
- North: PD 193 (PDS 50) (Planned Development, PDS 50)
- South: PD 193 (PDS 24) (Planned Development, PDS 24)
- East: PD 193 (PDS 66) (Planned Development, PDS 66)
- West: PD 193 (HC) (Planned Development, Heavy Commercial)

**Land Use:**

The subject site is developed with an office structure/use (HKS). The areas to the north, east, south, and west are developed with a mix of land uses.

**Zoning/BDA History:**

<p>1. BDA167-115, Property at 1919 McKinney Avenue (the subject site)</p>	<p>On October 17, 2017, the Board of Adjustment Panel A granted a special exception to the landscape regulations and imposed the submitted revised alternate landscape plan as a condition. The case report stated the request was made to obtain a building permit for a surface parking lot on site developed with an office structure/use - a structure that according to DCAD was built in the 1920's prior to the landscape ordinance adopted in the mid 80's, and to not fully provide required landscaping on the subject site, more specifically to not provide street trees, sidewalks, and screening of off-street parking along Cedar Springs Road, and sections of St. Paul and McKinney Avenue.</p>
<p>2. BDA134-086, Property at 1919 McKinney Avenue (the subject site)</p>	<p>On September 16, 2014, the Board of Adjustment Panel A granted a special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition. The case report stated the request was made to construct and maintain a surface parking lot on site developed with an office structure/use (HKS) - a structure that according to the application was developed prior to the landscape ordinance adopted in the mid-80's.</p>

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3. BDA 967-300, Property at 1907 McKinney Avenue (a portion of the subject site)

On October 28, 1997, the Board of Adjustment Panel A was informed that the originally submitted request for a special exception to the landscape regulations was removed from the docket since it had been determined by staff that the request originally heard on September 23, 1997, was not required.

**GENERAL FACTS/ STAFF ANALYSIS:**

- This request for a special exception to the landscape regulations focuses on constructing and maintaining a commercial/office use/structure, and not fully meeting the landscape regulations, more specifically, not meeting the street tree and sidewalk requirements on the subject site.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- 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 PD 193 (HC). Specifically, the applicant requests approval of a revised alternate landscape plan for the full property, as required under 51P-193.126. The plan revises a previously approved landscape plan to include a new outdoor patio area, a new paved ramp from patio to the sidewalk, and the removal of one tree, relocation of two trees, and one new additional tree.
- The Chief Arborist's memo states the following with regard to "provision":
  - The alternate landscape plan provides for a sidewalk, a tree planting area, and screening of off-street parking. The HC district requires only tree planting zones, sidewalks, and screening conditions. Existing landscaping and sidewalk conditions apply for the three block faces.
- The Chief Arborist's memo states the following with regard to "deficiencies":
  - The property does not comply with PD 193(HC) requirements due to street trees and sidewalks not being placed according to regulation. The original construction was established prior to passage of the ordinance and the sidewalks follow their initial alignment.
- The Chief Arborist's memo states the following with regard to "factors":
  - A new restaurant alongside the focus area will establish an outdoor seating area along McKinney Avenue which would cause the removal of one previously established tree, and the transplant of two trees recently planted. An additional

tree will replace the one removed in close proximity to the original. The sidewalk will remain in its former and current location with minor modification.

- The City of Dallas Chief Arborist recommends approval of the revised alternate landscape plan because the plan meets the spirit and intent of the PD 193(HC) landscape regulations, and the established site conditions limit the ability to conform to current standards without full redevelopment of the property.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where a revised alternate landscape plan has been submitted that is deficient in meeting the street trees requirements of the PD 193 landscape requirements) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards”.
- If the Board were to grant this request and impose the submitted revised alternate landscape plan as a condition, the site would be granted an exception from full compliance to street tree and sidewalk requirements of the PD 193 landscape requirements of the Oak Lawn PD 193 landscape ordinance.

### **Timeline:**

July 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.

September 11, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made 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”.

September 13, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<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.

September 27, 2018: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief



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

October 4, 2018: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: October 16, 2018**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move to **grant** the Board of Adjustment application **BDA178-109** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

Compliance with the submitted revised alternate landscape plan is required.

SECONDED: **Nelson**

AYES: 4 – Schulte, Nelson, Narey, Sibley

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER: BDA178-116(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Majenica Springer for a variance to the front yard setback regulations at 1907 McMillan Avenue. This property is more fully described as Lot 13, Block B/1977, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and/or maintain a structure and provide a 2-foot front yard setback, which will require a 23-foot variance to the front yard setback regulations.

LOCATION: 1907 McMillan Avenue

APPLICANT: Majenica Springer

REQUEST:

A request for a variance to the front yard setback regulations of 23’ is made to construct and maintain a “pool” structure part of which is to be located 2’ from one of the site’s

two front property lines (Madera Street) or 23' into this 25' front yard setback on a site developed with a single-family home.

**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-7.5 (A) zoning district. It is irregular shaped, and it is restrictive in area. The subject site has two front yard setbacks and the lot is approximately 5,840 square feet in area when most lots in this zoning district have one front yard setback and are 7,500 square feet.
- In addition, the applicant has established how the irregular shape and restrictive area preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification by submitting a document indicating among other things that that the total home size of the proposed home on the subject site at approximately 1,770 square feet with a pool is commensurate to 9 other homes in the same R-7.5(A) zoning district that have average home size of approximately 3,235 square feet with a pool.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) (Single family district 7,500 square feet)

South: R-7.5(A) & NS(A) (Single family district 7,500 square feet) & (Neighborhood Services)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-7.5(A) (Single family district 7,500 square feet)

### **Land Use:**

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

### **Zoning/BDA History:**

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

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

- The request for variance to the front yard setback regulations of 23' focuses on constructing and maintaining a "pool" structure part of which is to be located 2' from one of the site's two front property lines (Madera Street) or 23' into this 25' front yard setback on a site developed with a single-family home.
- The property is located in an R-7.5 (A) (Single-family district 7,500 square-foot) zoning district which requires a minimum front yard setback of 25'.
- The subject site has two 25' front yard setbacks (one on the east along McMillan Avenue, the other on the west along Madera Street) since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- The submitted plan represents that a "pool" structure is proposed to be located as close as 2' from one of the site's two front property lines (Madera Street) or 23' into this 25' front yard setback.
- The subject site is flat, irregular in shape and according to the submitted application is 0.13 acres (or approximately 5,840 square feet) in area. The site is zoned R-7.5 (A) where lots are typically 7,500 square feet in area.
- According to DCAD records, the "main improvement" for property addressed at 1907 McMillan Avenue is a structure built in 2007 with 1753 square feet of total living area with the following "additional improvement": a 444 square foot attached garage.
- Most lots in the R-7.5(A) zoning district have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback; this site has two 25' front yard setbacks and two 5' side yard setbacks.
- The following additional information was gleaned from the submitted site plan:
  - The pool structure is represented as being approximately 30' in length parallel to Madera Street and 14' in width or approximately 420 square feet in area.
  - The pool structure is represented as being located approximately 2' from the property line fronting Madera Street.
- The applicant has submitted a document indicating that the total "maximum AC space" of the proposed home on the subject site is approximately 1,770 square feet

which is smaller than that of 9 other homes the applicant listed of properties in R-7.5 (A) zoning district. (The average square footage of 9 other properties listed in the applicant's document is approximately 3,235 square feet with a pool).

- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- 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 pool structure to be located 2' from one of the site's two front property lines (Madera Street) or 23' into this 25' front yard setback.

### **Timeline:**

August 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.

September 11, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel A.

September 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<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.

September 25, 2018: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October

public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: October 16, 2018**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move to **grant** the Board of Adjustment application **BDA178-116** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

Compliance with the submitted site plan is required.

SECONDED: **Nelson**

AYES: 4 – Schulte, Nelson, Narey, Sibley

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER: BDA178-110(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Peter Kavanagh for a special exception to the landscape regulations at 3006 Oates Drive. This property is more fully described as Lot 10, Block A/7356, and is zoned R-7.5(A), which requires mandatory landscaping. The applicant proposes to construct a and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 3006 Oates Drive

APPLICANT: Peter Kavanagh

REQUEST:

A request for a special exception to the landscape regulations is made to construct and maintain a community service center use, and not fully meet the landscape regulations more specifically, to not meet required perimeter landscape buffer strip and required plant materials along the eastern property boundary.

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

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

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

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

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

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted revised alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the revised alternate landscape plan because strict compliance with the Article X regulations for the perimeter landscape buffer will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-7.5(A) (SUP#2290) (Single-family district 7,500 square feet, SUP for a community service center)
- North: R-7.5(A) (SUP#2039) (Single-family district 7,500 square feet, SUP for a community service center)
- South: R-7.5(A) (Single-family district 7,500 square feet)
- East: R-7.5(A) (Single-family district 7,500 square feet)
- West: R-7.5(A) (SUP#2201) (Single-family district 7,500 square feet, SUP for a Monopole Cellular Tower)

**Land Use:**

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

### **Zoning/BDA History:**

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

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

- This request for a special exception to the landscape regulations focuses on constructing and maintaining a community service center use/structure, and not fully meeting the landscape regulations, more specifically, not meeting the required perimeter landscape buffer strip and required plant materials along the eastern property boundary.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within 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 a revised alternate landscape plan to authorize the removal of a required perimeter landscape buffer strip (Sec. 51A-10.125(b)(1)), and required plant materials (Sec. 51A-10.125(b)(7)), along the eastern property boundary.
- The Chief Arborist's memo states the following with regard to "provision":
  - The revised alternate landscape plan provides all Article X landscape requirements with the exception to the listed deficiencies. A site plan in SUP 2290 for use and development of the property was approved by the City Council. A landscape plan was not provided.
- The Chief Arborist's memo states the following with regard to "deficiencies":
  - The property is within a single family residential district (R-7.5(A)). As a result, a perimeter landscape buffer strip of a minimum of 10' width is required along the southern, western, and eastern perimeters. The landscape buffer area was not provided on the approved SUP site plan.
- The Chief Arborist's memo states the following with regard to "factors":
  - The private property to the east of the alley is zoned residential, but is now also established as SUP 2201 which is a non-residential use. Although the residential adjacency exists, the planned use is for other than single family uses. The property line to the south will be buffered with existing and new plants.

- Existing trees will be retained in several locations and new trees will be planted for site and street tree purposes. Additional planting to the south, adjacent to the parking lot, is provided as a requirement of the SUP.
- The City of Dallas arborist recommends approval of the revised alternate landscape plan because strict compliance with the Article X regulations for the perimeter landscape buffer will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property.
- 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 revised alternate landscape plan as a condition to the request, the site would be provided an exception from the required perimeter landscape buffer strip and the required plant materials along the eastern property boundary.

**Timeline:**

July 2, 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.

September 11, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel A.

September 13, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<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.

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

October 4, 2018: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).



October 4, 2018: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: October 16, 2018**

**APPEARING IN FAVOR:** Peter Kavanagh, 1620 Handley, #A, Dallas, TX

**APPEARING IN OPPOSITION:** Michael Hobgood, 9623 Michael Ln., Dallas, TX

**MOTION: Sibley**

I move that the Board of Adjustment, in Appeal No. BDA 178-110, on application of Peter Kavanagh, **grant** the request of this applicant for a special exception to the landscaping requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that (1) strict compliance with the requirements of the 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.

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

- Compliance with the submitted alternate landscape plan is required.

**SECONDED: Schulte**

**AYES:** 4 – Schulte, Nelson, Narey, Sibley

**NAYS:** 0

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

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**FILE NUMBER:** BDA178-095(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Steven Wood for a special exception to the fence standards regulations at 4070 Cedarbrush Drive. This property is more fully described as Lot 7, Block C/6404, and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 7 foot 6 inch high fence in a required front yard, which will require a 3 foot 6 inch special exception to the fence standards regulations.

**LOCATION:** 4070 Cedarbrush Drive

**APPLICANT:** Steven Wood

**REQUEST:**

A request for a special exception to the fence standards regulations related to height of 3’ 6” is made to maintain a 7’ 6” high stucco columns and a 6’ 7” wrought iron fence with

a wrought iron swing gate in the required front yard 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-16(A) (Single family district 16,000 square feet)
- North: R-16(A) (Single family district 16,000 square feet)
- South: R-16(A) (Single family district 16,000 square feet)
- East: R-16(A) (Single family district 16,000 square feet)
- West: R-16(A) (Single family district 16,000 square feet)

**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 uses.*

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the fence height of 3' 6" focuses on maintaining a 7' 6" high stucco columns and a 6' 7" wrought iron fence with a wrought iron swing gate in the required front yard on a site developed with a single family home.
- 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 property is located in an R-16(A) zoning district. The site has a 40' required front yard caused by a platted building line along Cedarbrush Drive.
- The applicant had submitted a site plan and elevation that shows the proposal in the front yard setback reaching a maximum height of 7' 6".
- The following additional information was gleaned from the submitted site plan/elevation:

- The proposal is represented as being approximately 28' in length parallel to Cedarbrush and approximately 8' perpendicular to Cedarbrush Drive on the west side in this front yard setback.
- The proposal is represented as being located approximately 32' from the front property line. (The distance between the fence and the pavement line is approximately 43').
- The Sustainable Development and Construction Department 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 October 5<sup>th</sup>, no letters had been submitted in support of the request, and one letter had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 7' 6" in height) will not adversely affect neighboring property.
- Granting this special exception of 3' 6" with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 4' in height to be maintained in the location and of the heights and materials as shown on this document.

**Timeline:**

- May 30, 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.
- August 14, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 14, 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 August 29<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 7<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.
- September 4, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Authorized Hearing/Development

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

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

September 18, 2018: The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action on this application until the next public hearing to be held on October 16, 2018.

September 21, 2018: The Board Senior Planner wrote the applicant a letter of the board's action; the September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: October 16, 2018**

**APPEARING IN FAVOR:** Steven Wood, P.O. Box 3293, Forney, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Narey**

I move that the Board of Adjustment, in Appeal No. BDA 178-095, on application of Steven Wood, **grant** the request of this applicant to construct and/or maintain a seven-foot six-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/elevation is required.

**SECONDED:** Nelson

**AYES:** 4 – Schulte, Nelson, Narey, Sibley.

**NAYS:** 0

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

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**FILE NUMBER:** BDA178-065(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Jorge Hernandez for a variance to the floor area for structures accessory to single-family uses regulations at 431 W. Brooklyn Avenue. This property is more fully described as Lot 3, Block 65/3186, and is zoned CD 3, in which an accessory structure may not exceed 25% of the floor area of the main structure. The applicant proposes to construct and/or maintain a single family residential accessory structure with 546 square feet of floor area (44.9% of the 1,217 square foot floor area of the main structure), which will require a 242 square foot variance to the floor area for structures accessory to single-family uses regulations.

**LOCATION:** 431 W. Brooklyn Avenue

**APPLICANT:** Jorge Hernandez

**REQUESTS:**

A request for a variance to the floor area regulations for structures accessory to single-family uses of 242 square feet (or 20 percent) is made to maintain an accessory structure with 546 square feet of floor area of the 1,217 square feet floor area of the main structure on a site that is developed with a single-family home.

**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:

- 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 CD 3 zoning district.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 3 (Conservation District)  
North: CD 3 (Conservation District)  
South: CD 3 (Conservation District)  
East: CD 3 (Conservation District)  
West: CD 3 (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 uses.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on maintaining an accessory structure with 546 square feet of floor area of the 1,217 square feet floor area of the main structure on the subject site.
- The Dallas Development Code Sec. 51A 4.209 (E) (vii) (dd) states:
  - The floor area of any individual accessory structure on a lot, excluding floor area used for parking, may not exceed 25 percent of the floor area of the main building.
- The site is located in CD 3 which states that this lot is limited exclusively to those uses permitted in the R-7.5(A) Single Family District.
- DCAD records indicate the following improvements for property located at 431 W Brooklyn Avenue: “main improvement: a structure with 1,217 square feet of living area built in 1925” and “additional improvements: a 600 square feet storage building”.
- The submitted site plan makes the following notations:
  - Existing house slab: 1,217 square feet.

- Total living area: 1,217 square feet.
- Proposed/Existing accessory structure: 546 square feet or 45 percent.
- Maximum floor area: 25 percent.
- Surplus floor area: 20 percent.
- The site plan represents that the accessory structure exceeds the required 25 percent maximum floor area of the main building requirements on the subject site.
- The subject site is rectangular, flat, and according to the application, is 0.15 acres (or approximately 6,540 square feet) in area. The site is zoned CD 3 where lots in this district required 7,500 square feet in area.
- The applicant has submitted a document indicating among other things that the total home size and proposed additional improvements on the subject site are approximately 1,770 square feet, and the average of 10 other properties in the same zoning is approximately 1,970 square feet.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the floor area for structures accessory to single-family uses 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 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 3 zoning classification.
- If the Board were to grant a variance to the floor area for structures accessory to single-family uses regulations and impose the submitted site plan as a condition, the building footprints of the structures on the site would be limited to what is shown on this document.

**Timeline:**

August 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.

September 11, 2018: The Board of Adjustment Secretary assigned this case to the Board of Adjustment Panel A.

September 13, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the September 26<sup>h</sup> deadline to

submit additional evidence for staff to factor into their analysis; and the October 5<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.

September 26, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: October 16, 2018**

APPEARING IN FAVOR: Jorge Hernandez, 431 W. Brooklyn Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Narey**

I move that the Board of Adjustment, in Appeal No. BDA 178-065, on application of Jorge Hernandez, **deny** the variance to the floor area ratio for a structure accessory to the single-family use regulations requested by this applicant **with** 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: **Nelson**

AYES: 4 – Schulte, Nelson, Narey, Sibley.

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

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MOTION: **Sibley**



I move to adjourn this meeting.

**SECONDED: Schulte**

**1:46 P. M.:** Board Meeting adjourned for **October 16, 2018.**

\_\_\_\_\_  
CHAIRPERSON

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BOARD ADMINISTRATOR

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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.