

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1F AUDITORIUM
MONDAY, MARCH 21, 2016**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, and Marla Beikman, regular member

MEMBERS ABSENT FROM BRIEFING: Peter Schulte, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member, and Marla Beikman, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Neva Dean, Interim Asst. Director, Mary McCullough, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Jennifer Mundoz, planner and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Neva Dean, Interim Asst. Director, Mary McCullough, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

12:00 Noon The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 21, 2016** docket.

1:06 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise

indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C February 18, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-025(SL)

BUILDING OFFICIAL'S REPORT: Application of Ryan Johnson for a special exception to the fence height regulations at 5931 Park Lane. This property is more fully described as Lot 6A, Block 1/5614, and is zoned PD 910, which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 7 foot 6 inch high fence, which will require a 3 foot 6 inch special exception to the fence height regulations.

LOCATION: 5931 Park Lane

APPLICANT: Ryan Johnson

REQUEST:

A request for a special exception to the fence height regulations of 3' 6" is made to construct and maintain a 6' high fence (a 4' open iron picket fence atop a 2' high stone base) with approximately 6' 8" high columns, and two, 7' 6" high arched open iron picket entry gates in the front yard setback on a site being developed with a single family structure.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences 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 height regulations since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: PD 910 (Planned Development)
North: R-1ac (A) (Single family district 1 acre)
South: R-1ac (A) (Single family district 1 acre)
East: R-1ac (A) (Single family district 1 acre)
West: R-1ac (A) (Single family district 1 acre)

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:

1. On April 23, 2014, the City Council passed an ordinance creating PD 910 (the subject site) on property that had been zoned R-1ac(A).
2. BDA101-076, Property at 5946 Park Lane (the property southeast of the subject site)

On September 20, 2011, the Board of Adjustment Panel A granted request for a special exceptions to the fence height regulations of 2' 6" and visual obstruction regulations. The Board imposed the following condition: compliance with the submitted and elevation is required.

The case report stated the requests were made to construct/maintain a primarily a 6' high open iron fence with 6' 6" high stone columns/iron entry gate, and maintaining portions of an existing solid cedar fence/wall and two 8' 6" high brick columns in the 45 foot visibility triangle at the intersection of Park Lane and Preston Road on a site developed with a single family home.

3. BDA 056-020, Property at 5946 Park Lane (the property southeast of the subject site)

On November 15, 2005, the Board of Adjustment Panel A granted a request for a special exception to the fence regulations of 4' 6" and imposed the submitted site plan and elevation as a condition to the request.

The case report stated that the request was made in conjunction with constructing and maintaining an approximately 8' 2" high rough cedar wall with 8' 6" high brick columns in the front yard setback perpendicular to Park Lane.

4. BDA989-109, Property at 5910 Park Lane (two lots southwest of the subject site)

On October 20, 1998, the Board of Adjustment Panel B granted a request for a special exception to the fence height special regulations of 5' and imposed following condition to these requests: Compliance with the submitted site plan/elevation is required.

The case report stated the request was made in conjunction with constructing a 5.5' – 7.5' high open steel picket fence with 7.5' high columns, and 9' high columns.

5. BDA956-189, Property at 5825 Park Lane (three lots west of the subject site)

On April 23, 1996, the Board of Adjustment granted requests for special regulations to the fence height and visual obstruction regulations and imposed following condition to these requests: Compliance with the submitted site/landscape plan is required.

The case report stated the request was made in conjunction with constructing a 6' 8" high fence with 7' 3" high columns, and 8' high gate with 8' high columns.

5. BDA978-127, Property at 5934 Park Lane (the lot south of the subject site)

On April 28, 1998, the Board of Adjustment Panel A granted requests for special regulations to the fence height and visual obstruction regulations and imposed following condition to these requests: Compliance with the attached sit/elevation plan is required.

The case report stated the request was made in conjunction with constructing a 6' high open wrought iron picket fence with 6.5' high solid columns and a 7' high open metal entry gate.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 6' high fence (a 4' open iron picket fence atop a 2' high stone base) with approximately 6' 8" high columns, and two, 7' 6" high arched open iron picket entry gates in the front yard setback on a site being developed with a single family structure.
- 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 subject site is zoned PD 910 and has a 40' front yard setback.
- The submitted revised site plan and revised elevation indicates that the proposal reaches a maximum height of 7' 6" to account for two arched entry gates.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 200' in length parallel to the street.
 - The proposed fence is represented as being located approximately on the front property line, or approximately 25' from the pavement line.
- Two single family lots front the proposed fence, one with an approximately 6' high open metal fence in its front yard that appears to be a result of a granted fence height special exception in 2011 (BDA101-076); and the other with a fence that does not appear to exceed 4' in height.
- The Board Administrator conducted a field visit of the site and surrounding area (properties Park Lane from Preston Road on the east to approximately 300 feet to the west of the site) and noted two other fences over 4' in height and in front yard setback – an approximately 6' high open metal fence two lots to the southwest of the subject site that appears to be a result of a granted fence height special exception in 1998 (BDA989-109), and an approximately 7' high solid fence three lots to the west of the subject site that appears to be a result of a granted fence height special exception in 1996 (BDA956-189).
- As of March 11, 2016, two letters have been submitted in support of the request and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' 6" will not adversely affect neighboring property.
- Granting this special exception of 3' 6" with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would require the proposal exceeding 4' in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

January 21, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 9, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 9, 2016: The Board Administrator contacted the applicant and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 11th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

February 26, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

March 8, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Interim Building Official, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, and the Assistant City Attorneys to the Board.

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

March 10, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move to grant that the Board of Adjustment grant application **BDA 156-025** 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 or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Beikman

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-027(SL)

BUILDING OFFICIAL'S REPORT: Application of Allan R. Brown, represented by Steven Dimitt, for variances to the front yard setback and height regulations at 1015 N. Carroll Avenue. This property is more fully described as Lot 5, Block 8/768, and is zoned PD 298 (Subarea 9), which requires a front yard setback of 30 feet and limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a structure and provide a 12 foot front yard setback, which will require an 18 foot variance to the front yard setback regulations, and to construct and maintain a structure with a building height of 45 feet, which will require a 9 foot variance to the maximum building height regulations.

LOCATION: 1015 N. Carroll Avenue

APPLICANT: Allan R. Brown
Represented by Steven Dimitt

REQUESTS:

The following requests were originally made on a site that is in part undeveloped and in part developed with multifamily and office uses:

1. A variance to the front yard setback regulations of 18' had been made to construct and maintain an 8-unit townhome development that would be located in the site's two front yard setbacks on Swiss Avenue and North Carroll Avenue; and
2. A variance to the height regulations of 9' had been made to construct and maintain the aforementioned townhome development that would be 45' in height.

However on March 4, 2016, the applicant's representative submitted a letter (see Attachment A) that stated among other things that he had met with the neighborhood association and other neighbors since the filing of the application, and that in order to address some comments and concerns, he is significantly revising the entire development.

As a result, the applicant no longer seeks a variance or to the front yard setback on Swiss Avenue or a height variance but will seek variance to the front yard setback on North Carroll Avenue and a special exception to the off-street parking regulations. Lastly, the applicant requests that the Board not consider the previously submitted plans

or the variance requests that he submitted in January at the March hearing but requests that the Board delay consideration of this case until April.

STANDARD FOR A VARIANCE:

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:

Delay action until April 18, 2016

Rationale:

- Staff is not able to reach conclusions on the applicant's requests for variances to the front yard setback and height regulations given that the applicant has written that since he filed the application and plans in January of 2016, he is in the process of significantly revising the entire development, and requested that the Board not consider the originally submitted plans or variance requests.

BACKGROUND INFORMATION:

Zoning:

Site: PD 298 (Subarea 9, MF-2 and CR), H/72 (Planned Development, Historic)
North: PD 298 (Subarea 9, R-7.5 & P), H/72 (Planned Development, Historic)
South: PD 298 (Subarea 9, MF-2), H/72 (Planned Development, Historic)
East: PD 298 (Subarea 13), H/72 (Planned Development, Historic)
West: PD 298 (Subarea 9, MF-1), H/72 (Planned Development, Historic)

Land Use:

The subject site is in part undeveloped and in part developed with multifamily and office uses. The areas to the north and west are developed with multifamily uses; the area to the east is undeveloped; and the area to the south is developed with an office use.

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 (variances):

- The original request focused on constructing and maintaining an 8-unit townhome development that would be located in the site's two front yard setbacks on Swiss Avenue and North Carroll Avenue, and that would be 45' in height.
- The Building Official has provided the following information relevant to this appeal:
 - The site is zoned PD 298 (Subarea 9, MF-2 and CR), H/72. PD 298, Subarea 9 conditions state the following: Subarea 9 is subject to regulations governing the R-7.5(A), TH-2(A), MF-2(A), MU-1, MU-1-D, and CR districts of Chapter 51(A). The zoning district category applicable to each tract in Subarea 9 is shown on Exhibit 298B. The MF-2(A) required front yard setback is 15' and the CR required front yard setback is 15'.
 - The zoning of the adjoining property on the N. Carroll Street frontage is PD 298 (Subarea 13) H/72 (Tract 1).
 - The appeal application references a required 30' front yard setback ("...set forth in the Peak's Suburban Ordinance #22352...") and requests an 18' variance to allow a 12' setback.
 - The following Historic Overlay 72 (H/72) requirement appears to be the basis for the required 30' front yard setback.
- According to DCAD records, the "main improvement" at 1015 N. Carroll Avenue is a "medical office building" with 24,618 square feet built in 1955.
- The subject site is flat, rectangular in shape, and according to the application is 1.79 acres in area.
- Prior to the applicant submitting a letter on March 4th in which he requested: 1) a delay on these variances since he is in the process of significantly revising the entire development, and 2) that the Board not consider the previously/originally submitted plans or variances, the applicant had the burden of proof in establishing the following:
 1. That granting the variance to the front yard setback and height regulations would not have been 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.
 2. The variances would have been 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 298 (Subarea 9, MF-2 and CR), H/72 zoning classification.

3. The variances would not have been 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 298 (Subarea 9, MF-2 and CR), H/72 zoning classification.

Timeline:

January 21, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 9, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 9, 2016: 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 March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 11th 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 4, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

March 8, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Interim Building Official, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2016

APPEARING IN FAVOR: Steve Dimitt, 2323 Ross Ave., Dallas, TX

APPEARING IN OPPOSITION: Michael Yucon, 4511 Swiss, Dallas, TX

MOTION: Schulte

I move to grant that the Board of Adjustment, in Appeal No. **BDA 156-027** hold this matter under advisement until **April 18, 2016**.

SECONDED: Carreon

AYES: 3 – Richardson, Coulter, Carreon

NAYS: 2 - Schulte, Beikman

MOTION PASSED: 3 – 2

MOTION: Schulte

I move to adjourn this meeting.

SECONDED: Coulter

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

1:38 P. M. - Board Meeting adjourned for **March 21, 2016**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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