

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
TUESDAY, MARCH 22, 2016**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Mark Rieves, regular member, Garry Sibley, alternate member, Robert Agnich, alternate member and Peggy Hill, alternate member

MEMBERS ABSENT FROM BRIEFING: Michael Gibson, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Mark Rieves, regular member, Garry Sibley, alternate member, Robert Agnich, alternate member and Peggy Hill, alternate member

MEMBERS ABSENT FROM HEARING: Michael Gibson, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner and Trena Law, Board Secretary

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 22, 2016** docket.

1:04 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

To approve the Board of Adjustment Panel February 16, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 22, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-019(SL)

BUILDING OFFICIAL’S REPORT: Application of David Harrison, represented by Kori Haug of Bella Firma, Inc., for a special exception to the landscape regulations at 2740 Cedardale Road. This property is more fully described as Lot 1A, Block A/8299, and is zoned LI, which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2740 Cedardale Road

APPLICANT: David Harrison
 Represented by Kori Haug of Bella Firma, Inc.

REQUEST:

A special exception to the landscape regulations is made to construct and maintain an office/warehouse use/structure on a site currently under development, and not fully meet the landscape regulations.

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 Chief Arborist recommends approval of the proposed landscape plan because strict compliance with the site tree requirements for this particular building site will unreasonably burden the use of the property, and the plan does not adversely affect neighboring properties which will have similar or industrial uses.
- Staff also concluded that strict compliance with the requirements of the landscape regulations (planting the required number of site trees on the site) will unreasonably burden the use of the property since:
 - 1) the land area will be mostly developed with a large-scale distribution-style structure, and supporting impervious surfaces for parking, large vehicle maneuvering, trailer storage, and drainage infrastructure and basin;
 - 2) the relationship of available open, passive landscape area to more active site uses, and the supportive drainage facilities, is restrictive to planting large canopy trees at the required number of site trees for healthy development over time; and
 - 3) some open soil land area is also not compatible with planting due to necessary utility uses and easements.

BACKGROUND INFORMATION:

Zoning:

Site: LI (Light industrial)
North: A(A) (Agricultural)
South: LI (Light industrial)
East: LI (Light industrial)
West: City of Lancaster

Land Use:

The subject site is under development. The areas to the north and south are undeveloped, and the areas to the east and west appear to be under development.

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 focuses on developing the site with an office/warehouse use/structure and not fully meeting the landscape regulations, more specifically not providing the required number of site trees.
- 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 A). The memo states how this request is triggered by a new construction of an office/warehouse use.
- With regard to how the proposal is deficient to the landscape regulations, the Chief Arborist stated that site trees are required for office/warehouse showroom uses at a ratio of one tree for every 4,000 square feet of lot area, or 482 trees; and that the proposed plan provides 321 trees for the approximately 44 acre lot, being generally at a rate of one tree for every 6,000 square feet of lot area. This is a deficiency of 161 site trees, but the planting level is standard for industrial uses.
- The Chief Arborist's memo lists the following factors for consideration:
 1. Section 51A-10.125(b)(3) states all lots, other than single family or duplex uses, must have one tree per 4,000 square feet, except for industrial uses in IM and IR districts where one tree per 6,000 square feet of lot area must be provided.
 2. Site trees may be provided with large or small (ornamental) trees, provided that all other requirements for Article X are met.
 3. The property is generally a rectangular shape but is adjusted along the western boundary which fronts with private property in the City of Lancaster, and along the alignment with Balmorhea Drive to the south. The land area will be mostly developed with a large-scale distribution-style structure, and supporting impervious surfaces for parking, large vehicle maneuvering, trailer storage, and drainage infrastructure and basin. The relationship of available open, passive landscape area to more active site uses, and the supportive drainage facilities, is restrictive to planting large canopy trees at the required number of site trees for healthy development over time. Some open soil land area is also not compatible with planting due to necessary utility uses and easements.
 4. The property is surrounded by more land area developed (to the east) or zoned for more industrial and warehouse uses. The new streets and site platting comply with city and state regulations for development. Available planting areas for providing a suitable scale of landscaping for industrial-style development are oriented toward the perimeters and general parking areas, which are also shared with supportive infrastructure.

5. The proposed plan has no other Article X deficiencies. No trees are required for tree mitigation purposes.
- The City of Dallas Chief Arborist recommends approval of the proposed landscape plan because strict compliance with the site tree requirements for this particular building site will unreasonably burden the use of the property, and the plan does not adversely affect neighboring properties which will have similar or industrial uses.
 - 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 landscape plan as a condition to the request, the site would be provided exception from full compliance with the required number of site trees on the subject site.

Timeline:

November 2, 2015: 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 A.

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 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 14, 2016: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: MARCH 22, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Sibley

I move to grant that the Board of Adjustment grant application **BDA 156-019(SL)** 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 alternate landscape plan is required.

SECONDED: Nolen

AYES: 5 – Nolen, Rieves, Agnich, Sibley, Hill

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-022(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin Associates for a special exception to the fence height regulations at 5215 Lobello Drive. This property is more fully described as Lot 14B, Block A/5518, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot 3 inch high fence, which will require a 4 foot 3 inch special exception to the fence height regulations.

LOCATION: 5215 Lobello Drive

APPLICANT: Robert Baldwin of Baldwin Associates

REQUEST:

A request for a special exception to the fence height regulations of 4’ 3” is made to construct and maintain the following fence proposal in the front yard setback on a site being developed with a single family home:

- a 6’ high open wrought iron fence with 6’ 6” high stone columns; and
- an 8’ 3” high open wrought iron arched vehicular entry gate with 7’ 3” high columns flanked by 5’ 6” – 6’ 6” high, approximately 9’ long curved solid stone wing walls.

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: R-1ac (A) (Single family district 1 acre)
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 home. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

1. BDA989-289, Property at 5100 Lobello Drive (the property west of the subject site) On November 15, 1999, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 2.5' and imposed the following condition: compliance with the revised site plan/elevation showing a 6.5 foot open wrought iron fence as depicted on page 1-23 of today's briefing handout on this case, dated November 10, 1999 is required. The case report stated that the applicant's representative submitted a letter and a revised site plan/elevation indicating a maximum 6.5' high open iron fence setback from the property line a varying distances between 9-12' (see Attachment D); and that the fence would have an "undulating" appearance so that a number of large existing trees on the site will remain on the street side of the fence.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 6' high open wrought iron fence with 6' 6" high stone columns; and an 8' 3" high open wrought iron arched vehicular entry gate with 7' 3" high columns flanked by 5' 6" – 6' 6" high, approximately 9' long curved solid stone wing walls on a site being 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 subject site is zoned R-1ac(A) and has a 40' front yard setback.
- The applicant has submitted two documents – a partial site plan and a full fence elevation. The elevation indicates the proposal reaches a maximum height of 8' 3" for the arched open wrought iron vehicular gate.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 230' in length parallel to the street, and approximately 40' in length perpendicular to the street on the east and west sides of the site in the front yard setback.
 - The proposed fence/gate is represented as being located approximately 0' - 7' from the front property line, or approximately 13' – 32' from the pavement line.
- Two single family lots developed with single family structures front the proposed fence, neither with fences in the front yard.
- The Board Administrator conducted a field visit of the site and surrounding area (properties along Lobello Drive from Inwood Road on the west to approximately 300 feet to the east of the site) and noted one other fence over 4' in height and in front yard setback. The only fence noted in this area was an approximately 6.5' high open metal fence located immediately west that appears to be a result of fence height special exception request granted in 1999: BDA989-289. (See the "Zoning/BDA History" section of this case report for additional details).
- As of March 11, 2016, no letters have 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 height regulations of 4' 3" will not adversely affect neighboring property.
- Granting this special exception of 4' 3" 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 front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

January 11, 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 A.

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."

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 22, 2016

APPEARING IN FAVOR: Robert Baldwin, 3604 Elm St., Ste B, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA156-022**, on application of Robert Baldwin, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Rieves**

AYES: 3 – Nolen, Rieves, Agnich

NAYS: 2 - Sibley, Hill

MOTION PASSED: 3 – 2

FILE NUMBER: BDA156-023(SL)

BUILDING OFFICIAL’S REPORT: Application of Ryan Johnson for a special exception to the fence height regulations at 9401 Meadowbrook Drive. This property is more fully described as Lot 17, Block 5/5595, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot 8 inch high fence, which will require a 4 foot 8 inch special exception to the fence height regulations.

LOCATION: 9401 Meadowbrook Drive

APPLICANT: Ryan Johnson

REQUEST:

A request for a special exception to the fence height regulations of 4’ 8” is made to construct and maintain the following fence proposal in the front yard setback on a site being developed with a single family home:

- Primarily a 6’ 8” high fence* (4’ 8” open tube fence atop a 2’ high stucco wall) with 7’ 2” high stucco columns;
- One 6’ 8” high open tube pedestrian gate;
- Two 6’ 8” high open tube vehicular gates flanked by 7’ 2” high solid stucco, approximately 12’ long wing walls.

* The submitted site plan/elevation indicates that the fence on the far southern edge of the subject site reaches a height of 8’ 7 ½”, hence the special exception request of 4’ 8”.

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:

<u>Site:</u>	R-1ac (A) (Single family district 1 acre)
<u>North:</u>	R-1ac (A) (Single family district 1 acre)
<u>South:</u>	R-1ac (A) (Single family district 1 acre)
<u>East:</u>	R-1ac (A) (Single family district 1 acre)
<u>West:</u>	R-1ac (A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

1. BDA023-109, Property located at 9400 Meadowbrook Drive (the property east of the subject site)

On August 26, 2003, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 8' and imposed the following condition: compliance with the submitted site/landscape plan and revised elevation is required; granted a request for a variance to the front yard setback regulations of 3' and imposed the following condition: Compliance with the submitted site/landscape plan is required.

The case report stated that request for a fence height special exception was made to construct and maintain a 6.5' high open iron fence, an approximately 7' high iron posts; four, 8.5' high brick entry columns with approximately 2.5' high decorative lights atop; and two, 8.5 - 12' high wood and iron arched entry gates (one located on DeLoache, the other on Meadowbrook); and that the front yard variance request was made to maintain two air conditioning unites in the Meadowbrook Drive front yard setback.

2. BDA012-145, Property located at 5231 DeLoache Avenue (the property immediately southwest of the site)

On March 26, 2003, the Board of Adjustment Panel A granted a request for special exception to the fence height regulations to maintain a 5' fence (except for the driveway in which case the fence can rise to a maximum of 6.5'). The board further conditioned that "the support pillars must be at least 18 feet apart and not wider than 24 inches and not taller than 5.5 feet. Within 5 feet of the driveway, the pillars can rise to 6.5 feet. This height limitation should include the pillars and any fixtures on top of them. No part of the fence on the front of the property should have a stone wall as part of the fence. The fence should be built with vertical iron sections that are at least four inches apart."

3. BDA990-238, Property located at 5238 DeLoache Avenue (the property south of the site)

On March 28, 2000, the Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations requested in conjunction with constructing and maintaining an HVAC and pool equipment mechanical pad in the front yard setback, and a special exception to the fence regulations of 8' 2" with conditions, requested in conjunction with constructing and maintaining an 8' high open wrought iron fence with 9' 3" high masonry columns, a 12' 2" high open wrought iron entry gates with 10' 11" high masonry column along DeLoache Avenue and 9' 3" columns along Meadowbrook Drive.

4. BDA989-132, Property at 9436 Meadowbrook Drive (the property two lots northeast of the site)

On December 15, 1998, the Board of Adjustment Panel A granted a request for a special exception to the fence regulations of 4' and imposed the following condition: compliance with the submitted site/elevation plan is required.

The case report stated the request was made to construct and maintain an approximately 5' 8" high predominantly open metal fence, 6' 9" high brick columns, 7' 6" high open metal entry gate, and 8' high brick entry columns in the front yard setback along Meadowbrook Drive.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining primarily a 6' 8" high fence (4' 8" open tube fence atop a 2' high stucco wall) with 7' 2" high stucco columns; one 6' 8" high open tube pedestrian gate; two 6' 8" high open tube vehicular gates flanked by 7' 2" high solid stucco, approximately 12' long wing walls on a site being 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 subject site is zoned R-1ac(A) and has a 40' front yard setback.
- The applicant has submitted a site plan/elevation that indicates the proposal reaches a maximum height of 8' 7 ½" for a portion of the fence at the far southern edge of the subject site.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 270' in length generally parallel to the street.
 - The proposed fence is located approximately on the front property line or approximately 12' from the pavement line.
 - The proposed vehicular gates are represented as being located approximately 12' from the front property line, or approximately 24' from the pavement line.
- Two single family lots one of which is developed with a single family structure front the proposed fence, one with a fence in the front yard, the other without. The property at the northeast corner of Meadowbrook Drive and Deloache Avenue has an approximately 6.5' high open metal fence with significant screening that appears to be a result of fence height special exception request granted in 2003: BDA023-109. (See the "Zoning/BDA History" section of this case report for additional details).
- The Board Administrator conducted a field visit of the site and surrounding area (properties along Meadowbrook Lane approximately 300 to the north and noted a number of other fence over 4' in height and in front yard setbacks. Two approximately 6' – 8' high open metal fences were located immediately south of the subject site (one with recorded BDA history: BDA990-238; the other with no recorded BDA history); and two approximately 6' high fences were noted to the north: a brick fence immediately north with no recorded BDA history, and an open iron fence two lots to the northeast that appears to be a result of fence height special exception request granted in 1998: BDA989-132. (See the "Zoning/BDA History" section of this case report for additional details).
- 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 4' 8" will not adversely affect neighboring property.
- Granting this special exception of 4' 8" with a condition imposed that the applicant complies with the submitted site plan/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 this document.

Timeline:

January 19, 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 A.

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."

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 A).

BOARD OF ADJUSTMENT ACTION: MARCH 22, 2016

APPEARING IN FAVOR: Richard Moore, 4399 Westgrove Dr., Addison, TX

APPEARING IN OPPOSITION: No one

MOTION: Rieves

I move that the Board of Adjustment, in Appeal No. **BDA156-023**, on application of Ryan Johnson, **grant** the request to construct and maintain an 8-foot 8-inch-high fence in the property’s front yard as a special exception to the fence height requirements 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/elevation is required.

SECONDED: Nolen

AYES: 5 – Nolen, Rieves, Agnich, Sibley, Hill

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA156-010(SL)

BUILDING OFFICIAL’S REPORT: Application of Maxwell Fisher for a special exception to the Modified Delta Overlay District No. 1 regulations at 1904 Greenville Avenue. This property is more fully described as Lot 3 & 4, Block 1907, and is zoned PD-842 (MD-1), which states that the right to nonconforming delta parking credits are lost if the use is vacant for twelve months or more. The applicant proposes to carry forward nonconforming parking spaces under the delta theory that were lost because of a use that was discontinued or vacant for 12 months or more, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

LOCATION: 1904 Greenville Avenue

APPLICANT: Maxwell Fisher

REQUEST:

A request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for a retail use on the subject site developed with a vacant structure.

STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKING AND LOADING SPACES UNDER THE DELTA THEORY WHEN A USE IS DISCONTINUED OR REMAINS VACANT FOR 12 MONTHS OR MORE:

The Modified Delta Overlay District No. 1 states that the right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:

1. A decline in the rental rates for the area which has affected the rental market.
2. An unusual increase in the vacancy rates for the area which has affected the rental market.
3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

STAFF RECOMMENDATION:

Approval

Rationale:

- Staff concluded that the applicant had demonstrated that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of the following extreme circumstances:
 1. An unusual increase in the vacancy rates for the area which has affected the rental market. (The applicant had documented how the adjacent business is also vacant and in poor condition; and that there are several vacant stores in the block to the north).
 2. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property. (The applicant had documented: 1) how an experienced brokerage group cannot lease the space because of the outmoded nature of the streetscape, more specifically, the unimproved streetscape in front of the subject site rendering this area obsolete until the construction and streetscape improvements have been completed; and 2) how a report conducted by a licensed environmental professional maintains that there is a “likely presence of a hazardous substance” related to a dry cleaners operated directly adjacent to the site for decades, and as such a “high environmental risk connected with the subject site at this time.”)

3. Prolonged construction adjacent to the subject site. (The applicant had documented how construction in the area has had a profound negative impact on the area with business revenues declining; that business had declined since the street improvements began in what appears to be 2011; and that while the future improvements are welcome, the subject site has suffered from an extreme hardship compared to others until the construction in front of the subject site is completed).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 842, MD-1 (Planned Development, Modified Delta Overlay)
<u>North:</u>	PD 842, MD-1 (Planned Development, Modified Delta Overlay)
<u>South:</u>	PD 842, MD-1 (Planned Development, Modified Delta Overlay)
<u>East:</u>	PD 842, MD-1 (Planned Development, Modified Delta Overlay)
<u>West:</u>	PD 842, MD-1 (Planned Development, Modified Delta Overlay)

Land Use:

The subject site is developed with a vacant one-story commercial structure. The areas to the north, south, and west are developed with commercial/retail uses; and the area to the east is developed with multifamily 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 focuses on carrying forward nonconforming parking spaces under the delta theory terminated because the use on the site was discontinued or remained vacant for 12 months or more made in order for the applicant to obtain a Certificate of Occupancy for a retail use on the subject site which is developed with a vacant structure.
- The subject site is zoned PD 842, Modified Delta Overlay District 1.
- The Dallas Development Code provides the following with regard to “nonconformity as to parking or loading”:
 - Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional off-street parking and loading spaces are provided.
 - Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner: required parking or loading spaces for existing use minus the number of existing parking or loading spaces for existing use equals nonconforming rights as to parking or loading.

- Decreased requirements. When a use is converted to a new use having less parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.
- In 1987, the City Council created “Modified Delta Overlay Districts” in those areas where it has determined that a continued operation of the delta theory is not justified because there is no longer a need to encourage redevelopment and adaptive reuse of existing structures, or a continued application of the delta theory will create traffic congestion and public safety problems and would not be in the public interest.
- In a modified delta overlay district, the city council may limit the number of percentage of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.
- An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to any portion of the nonconforming parking or loading not needed to meet the new requirements are lost.
- An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.
- In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:
 - That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in this district is expanded.
- In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:
 - The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
 1. A decline in the rental rates for the area which has affected the rental market.
 2. An unusual increase in the vacancy rates for the area which has affected the rental market.
 3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.
- According to DCAD, the property at 1904 Greenville Avenue is developed with a “retail strip” with 3,450 square feet built in 1922.
- The application states that “re-establishing parking delta credits would allow the building to be re-occupied with a non-residential use. The property owner and broker have continually sought to lease the property with no intent of abandonment.”

Timeline:

- December 16, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 6, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 6, 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 January 27th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- January 22 &
February 1, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).
- February 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, 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, the Sustainable Development and Construction Department Project Engineers, and the Assistant City Attorneys to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- February 16, 2016: The Board of Adjustment Panel A conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on March 22, 2016.
- February 22, 2016: The Board Administrator wrote the applicant a letter that provided the board’s action; and 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.

February 18, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application and beyond what was submitted at the February 16th public hearing (see Attachment C).

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: FEBRUARY 16, 2016

APPEARING IN FAVOR: Dallas Cothrum, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Nolen**

I move that the Board of Adjustment in Appeal No. **BDA156-010**, hold this matter under advisement until **March 22, 2016**.

SECONDED: **Agnich**

AYES: 4 – Nolen, Rieves, Gibson, Agnich

NAYS: 0 -

MOTION PASSED: 4 – 0

BOARD OF ADJUSTMENT ACTION: MARCH 22, 2016

APPEARING IN FAVOR: Dallas Cothrum, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Patricia Carr, 5843 Vanderbilt, Dallas, TX
Stevelyn Pickens, 5602 Richmond Ave. Dallas, TX
Kim Comerford, 5623 Richmond Ave., Dallas, TX

MOTION: Nolen

I move that the Board of Adjustment, in Appeal No. **BDA156-010**, on application of Maxwell Fisher, **grant** the request to carry forward delta credits as a special exception to the Modified Delta Overlay District No. 1 regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows an extreme circumstance including:

- A decline in the rental rates for the area which has affected the rental market;
- An unusual increase in the vacancy rates for the area which has affected the rental market;
- Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties is affecting the marketability of the property.

SECONDED: Sibley

AYES: 4 – Nolen, Agnich, Sibley, Hill

NAYS: 1 - Rieves

MOTION PASSED: 4 – 1

2:37P.M.: Break

2:48 P.M.: Resumed

MOTION: Nolen

I move to adjourn this meeting.

SECONDED: Agnich

AYES: 5 – Nolen, Rieves, Sibley, Agnich, Hill

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

3:11 P. M.: Board Meeting adjourned for **March 22, 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.