

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL L1FN AUDITORIUM  
WEDNESDAY, MARCH 22, 2017**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Wini Cannon, regular member, Matt Shouse, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Joe Carreon, regular member,

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Wini Cannon, regular member, Matt Shouse, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: Joe Carreon, regular member,

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director Engineering, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director Engineering, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

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**1:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 22, 2017 docket.**

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**1:27 P.M.**  
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B February 22, 2017, public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MARCH 22, 2017**

**MOTION:** None

The minutes were approved.

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**FILE NUMBER:** BDA167-025(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Karen Tellez for a special exception to the fence standards at 4707 Walnut Hill Lane. This property is more fully described as Lot 4A, Block C/5531, 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 in a required front yard, which will require a 4 foot 3 inch special exception to the fence standards.

**LOCATION:** 4707 Walnut Hill Lane

**APPLICANT:** Karen Tellez

**REQUEST:**

A request for a special exception to the fence standards related to fence height of 4’ 3” is made to construct and maintain a fence higher than 4’ in the required front yard (a 5’ 7” high open steel picket fence with 6’ 3” high stone columns, and a 5’ 7” high open steel picket gate with 6’ 3” high stone columns topped with 2’ high decorative lamps parallel to the street, and an 8’ high solid wood fence on the east side of the site perpendicular to the street in the required front yard) on a site that is being 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-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 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. BDA145-031, Property located at 4686 Meadowood Road (the property southeast of the subject site)

On March 18, 2015, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 5' and imposed the submitted revised site plan and elevation dated March 18, 2015 as a condition.

The case report stated that the constructing and maintaining a 9' high solid brick fence to replace an approximately 7' high solid brick fence parallel to Walnut Hill Lane on the north, and an 8' high solid brick to replace an 8' high open picket perpendicular to Walnut Hill Lane on the west adjacent to Meadowood Road on a site developed with a single family home use.

2. BDA 990-271, Property at 9963 Rockbrook Lane (the property southwest of the subject site)

On May 15, 2000, the Board of Adjustment Panel C granted requests for special exceptions to the single family use and fence height regulations of 2' and imposed the following conditions: to the single family use special exception: compliance with the submitted site plan is required; and applicant must submit a valid deed restriction prohibiting the additional dwelling unit of the site from being used as a rental accommodation; and to fence height special exception: 1) In conjunction with retaining the 6 foot high brick/masonry wall, a tree survey or a landscape plan documenting the trees to be retained adjacent to the existing wall must be submitted, and 2) a landscape plan documenting the retention of ivy vines on the existing wall must be submitted.

The case report stated the requests were made to maintain an existing 6' high brick wall along Walnut Hill Lane and construct/maintain an extension of this wall an additional 90 feet westward along Walnut Hill Lane, and to construct/maintain a pool house/dwelling unit structure on the site.

3. BDA 045-266, Property at 4722 Walnut Hill Lane (two lots southeast of the subject site)

On August 17, 2005, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 4' 10" and imposed the submitted site plan and elevation as a condition.

The case report stated the request was made to construct and maintain an 8' high solid stucco fence with 8'10" stucco columns and 8' metal gates in the front yard setback on a site that is developed with a single family house.

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

- This request for a special exception to the fence standards related to fence height of 4' 3" focuses on constructing and maintaining a 5' 7" high open steel picket fence with 6' 3" high stone columns, and a 5' 7" high open steel picket gate with 6' 3" high stone columns topped with 2' high decorative lamps parallel to the street, and an 8' high solid wood fence on the east side of the site perpendicular to the street in the required front yard) on a site that is being developed with a single family home.

- The subject site is zoned R-1ac(A) which requires a 40' front yard setback; however because the site has a 60' platted building line, the site has a required 60' required front yard.
- 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 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 applicant has submitted a site plan and elevation of the proposal with notations indicating that the proposal reaches a maximum height of 8' 3".
- The following additional information was gleaned from the submitted site plan:
  - The proposal over 4' in height in the front yard setback is represented as being approximately 375' in length parallel to the street, and an approximately 44' in length perpendicular to the street on the east side of the site in the 65' required front yard.
  - The fence proposal is represented as being located approximately 6' from the front property line or approximately 11' from the pavement line; the gate proposal is represented as being located approximately 40' from the front property line or approximately 46' from the pavement line.
- Two single family lots front the proposed fence. Each of these lots has a fence in the front yard that appears to have been the result of special exceptions granted by the Board in 2000 and 2015. The fence southwest of the site is an approximately 6' high solid brick fence, and the fence southeast is an approximately 8' - 9' high masonry fence.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences in addition to the fences previously mentioned that appeared to be above 4' in height and located in a front yard setback. An approximately 6' high solid wood fence is located one lot to the west of the subject site behind significant landscaping; and an approximately 8' high solid wood fence is located two lots to the west. There is no recorded Board of Adjustment history with either of these fences.
- As of March 10, 2017, no letters had been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence standards related to fence height of 4' 3" will not adversely affect neighboring property.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height to be constructed and maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

December 16, 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 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 15, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION MARCH 22, 2017**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Cannon**

I move to grant that the Board of Adjustment grant application **BDA 167-025(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 site plan and elevation is required.

SECONDED: **Shouse**

AYES: 4 – Hounsel, Cannon, Shouse, Sibley

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

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**FILE NUMBER:** BDA167-028(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Peter Kavanagh for a special exception to the single family use regulations at 5142 Palomar Lane. This property is more fully described as Lot 3, Block D/5518, and is zoned R-1ac(A), which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit, which will require a special exception to the single family use regulations.

**LOCATION:** 5142 Palomar Lane

**APPLICANT:** Peter Kavanagh

**REQUEST:**

A request for a special exception to the single family use development standard regulations is made to construct and maintain a 1-story cabana/additional "dwelling unit" structure on a site developed with a 2-story main single family home/dwelling unit structure.

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

The board may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

**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 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 single family use development standard regulations focuses on constructing and maintaining a 1-story cabana/additional “dwelling unit” structure on a site developed with a 2-story main single family home/dwelling unit structure.
- The site is zoned R-1ac(A) where the Dallas Development Code permits one dwelling unit per lot.
- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- The Dallas Development Code defines “kitchen” as “any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities.”
- The Dallas Development Code defines “bathroom” as “any room used for personal hygiene and containing a shower or bathtub, or containing a toilet and sink.”
- The Dallas Development Code defines “bedroom” as “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sun rooms, and other similar rooms are considered bedrooms.”
- The submitted site plan denotes the locations of two building footprints, the larger of the two denoted as “existing two story residence” and the smaller of the two with denoted as “new pool cabana”.

- The submitted floor plan of the proposed pool cabana denotes the following rooms: cabana, kitchen, bath, and steam shower.
- Building Inspection has determined from the submittals that the pool cabana is an additional dwelling unit - that is per Code definition: “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- The site plan represents the sizes and locations of the two building footprints relative to the entire lot. The site plan denotes that the “main building area” is 6,246 square feet, and the “accessory building area” is 566 square feet.
- This request appears to center on the function of what is proposed to be inside the smaller structure on the site – the “new pool cabana” structure, specifically its collection of rooms. On March 7, 2017, the applicant emailed the Board Administrator the following: “We will be very clear that the structure has no impact on the use as a second or separate dwelling unit. The structure meets all regulations. It will be built without the kitchen if not approved by the board for a second dwelling unit”.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve this request, the Board may choose to impose a condition that the applicant comply with the site plan if they feel it is necessary to ensure that the special exception will not adversely affect neighboring properties. But granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

### **Timeline:**

January 26, 2017: 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 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 15, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION MARCH 22, 2017**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Cannon**

I move to grant that the Board of Adjustment grant application **BDA 167-028(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:

- The applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

SECONDED: **Shouse**

AYES: 4 – Hounsel, Cannon, Shouse, Sibley

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

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FILE NUMBER: BDA167-033(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Jared Parks for special exceptions to the fence standard and visual obstruction regulations at 5915 Orchid Lane. This property is more fully described as Lot 46, Block C/5508, and is zoned TH-1(A), which limits the height of a fence in the front yard to 4 feet and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct and maintain a 6 foot 4 inch high fence in a required front yard, which will require a 2 foot 4 inch special exception to the fence standards, and to locate and maintain items in a required

visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION:** 5915 Orchid Lane

**APPLICANT:** Jared Parks

**REQUESTS:**

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

1. A request for a special exception to the fence standards of 2' 4" is made to construct and maintain a fence (an approximately 8' long, 6' high open iron picket fence with a 6' 4" high stone column) higher than 4' in height in one of the site's two required front yards (Orchid Lane).
2. A request for a special exception to the visual obstruction regulations is made to locate and maintain a portion of the aforementioned open iron picket fence in the 45' visibility triangle at the intersection of Preston Road and Orchid Lane.

(Note that this application is immediately north of a property where the same applicant seeks similar special exceptions to the visual obstruction and fence standard regulations from the Board of Adjustment Panel B on March 22<sup>nd</sup>: BDA167-034).

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

**STAFF RECOMMENDATION (fence standards):**

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION (visual obstruction special exception):**

Approval, subject to the following condition:

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

Rationale:

- Staff concurred with the Sustainable Development Department Assistant Director of Engineering who has no objections to this request – that the 6’ high open iron picket fence with a 6’ 4” high stone column in the 45’ visibility triangle at the intersection of Preston Road and Orchid Lane does not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: TH-1(A) (Townhouse)  
North: NO(A) (SUP 775) (Neighborhood Office, Specific Use Permit)  
South: TH-1(A) (Townhouse)  
East: R-16(A) (Single family district 16,000)  
West: TH-1(A) (Townhouse)

**Land Use:**

The subject site is developed with a single family home. The area to the north is developed as an office use; and the areas to the east, south, and west are developed with single family uses.

**Zoning/BDA History:**

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|--|---|
| <ol style="list-style-type: none"> <li>1. BDA167-034, Property located at 5912 Orchid Lane (the property south of the subject site)</li> </ol> | <p>On March 22, 2017, the Board of Adjustment Panel B will consider requests for special exceptions to the fence standard and visual obstruction regulations made to construct and maintain a fence (a 6’ high open iron picket fence with a 6’ 4” high stone column) higher than 4’ in height in one of the site’s two required front yards (Preston Road), and locate and maintain a portion of the aforementioned open iron picket fence in the 45’ visibility triangle at the intersection of Preston Road and Orchid Lane.</p> |
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**GENERAL FACTS/STAFF ANALYSIS (fence standards):**

- This request for a special exception to the fence standards related to fence height of 2’ 4” focuses on constructing and maintaining an approximately 8’ long, 6’ high open iron picket fence with a 6’ 4” high stone column in one of the site’s two required front yards (Orchid Lane) on a site developed with a single family home.
- The subject site is zoned TH-1(A) which requires a 0’ front yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
- The site is located at the northwest corner of Preston Road and Orchid Lane.
- Given the single family zoning and location of the corner lot subject site, it has two required front yards – a 0’ front yard setback along Preston Road (the shorter of the

two frontages of the subject site which is always a front yard in this case) and a 10' required front yard along Orchid Lane. While Orchid Lane is the longer of the two frontages on the subject site which is typically considered a side yard where on this TH-1(A) zoned property a 9' high fence could be erected by right, the site has a required 10' required front yard along Orchid Lane because of a platted building line and in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the west of the subject site "front" on Orchid Lane.

- The applicant has submitted a site plan and an elevation of the proposal fence in the front yard setback with notations indicating that the proposal reaches a maximum height of 6' 4" for a stone column.
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 8' in length perpendicular to Orchid Lane/parallel to the Preston Road.
  - The fence proposal is represented as being located approximately on the Orchid Lane front property line or approximately 12' from the pavement line.
- One single family lot fronts the proposal, a lot that has an approximately 9' high fence parallel to Orchid Lane, however, according to the applicant, this tall fence was built years prior to the construction proposed and is not part of the application to the Board.
- The Board Administrator 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 March 10, 2017 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 standards of 2' 4" will not adversely affect neighboring property.
- Granting this special exception of 2' 4" 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 required front yard to be constructed and maintained in the location and of the heights and materials as shown on these documents.

**GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exception):**

- The request for a special exception to the visual obstruction regulations focuses on locating and maintaining a portion of a proposed approximately 8' long, 6' high open iron picket fence with a 6' 4" high stone column in the 45' visibility triangle at the intersection of Preston Road and Orchid Lane.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

- The applicant submitted a site plan and an elevation representing an approximately 8' long, 6' high open iron picket fence with a 6' 4" high stone column in the 45' visibility triangle at the intersection of Preston Road and Orchid Lane.
- The Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing how granting the request for special exception to the visual obstruction regulations to locate and maintain portions of a proposed approximately 9' long, 6' high open iron picket fence with 6' 4" high stone columns in the 45' visibility triangle at the intersection of Preston Road and Orchid Lane does not constitute a traffic hazard.
- Granting this request with the condition that the applicant complies with the submitted site plan and elevation would require the items in the visibility triangle to be limited to and maintained in the locations, height and materials as shown on these documents.

### **Timeline:**

January 27, 2017: 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 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 15, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standards that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 9, 2017: The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet marked "Has no objections".

**BOARD OF ADJUSTMENT ACTION MARCH 22, 2017**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Cannon**

I move to grant that the Board of Adjustment grant application **BDA 167-033(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 site plan and elevation is required.

**SECONDED: Shouse**

**AYES: 4 – Hounsel, Cannon, Shouse, Sibley**

**NAYS: 0**

**MOTION PASSED 4 – 0 (unanimously)**

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**FILE NUMBER: BDA167-034(SL)**

**BUILDING OFFICIAL’S REPORT:** Application of Jared Parks for special exceptions to the fence standard and visual obstruction regulations at 5912 Orchid Lane. This property is more fully described as Lot 35, Block A/5508, and is zoned TH-1(A), which limits the height of a fence in the front yard to 4 feet and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct and maintain a 6 foot 4 inch high fence in a required front yard, which will require a 2 foot 4 inch special exception to the fence standards, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION: 5912 Orchid Lane**

**APPLICANT: Jared Parks**

**REQUESTS:**

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

1. A request for a special exception to the fence standards of 2’ 4” is made to construct and maintain a fence (an approximately 9’ long, 6’ high open iron picket fence with a

6' 4" high stone column) higher than 4' in height in one of the site's two required front yards (Orchid Lane).

2. A request for a special exception to the visual obstruction regulations is made to locate and maintain a portion of the aforementioned open iron picket fence in the 45' visibility triangle at the intersection of Preston Road and Orchid Lane.

(Note that this application is immediately south of a property where the same applicant seeks similar special exceptions to the visual obstruction and fence standard regulations from the Board of Adjustment Panel B on March 22<sup>nd</sup>: BDA167-033).

### **STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

### **STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

### **STAFF RECOMMENDATION (fence standards):**

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

### **STAFF RECOMMENDATION (visual obstruction special exception):**

Approval, subject to the following condition:

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

Rationale:

- Staff concurred with the Sustainable Development Department Assistant Director of Engineering who has no objections to this request – that the 6' high open iron picket fence with a 6' 4" high stone column in the 45' visibility triangle at the intersection of Preston Road and Orchid Lane does not constitute a traffic hazard.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: TH-1(A) (Townhouse)  
North: TH-1(A) (Townhouse)  
South: TH-1(A) (Townhouse)  
East: PD 553 (Planned Development)

West: TH-1(A) (Townhouse)

**Land Use:**

The subject site is developed with a single family home. The areas to the north, south, and west are developed with single family uses; and the area to the east is a private school (St. Mark's School of Texas).

**Zoning/BDA History:**

- |  |  |
|--|--|
| 1. BDA167-033, Property located at 5915 Orchid Lane (the property north of the subject site) | On March 22, 2017, the Board of Adjustment Panel B will consider requests for special exceptions to the fence standard and visual obstruction regulations made to construct and maintain a fence (a 6' high open iron picket fence with a 6' 4" high stone column) higher than 4' in height in one of the site's two required front yards (Preston Road), and locate and maintain a portion of the aforementioned open iron picket fence in the 45' visibility triangle at the intersection of Preston Road and Orchid Lane. |
|--|--|

**GENERAL FACTS/STAFF ANALYSIS (fence standards):**

- This request for a special exception to the fence standards related to fence height of 2' 4" focuses on constructing and maintaining an approximately 10' long, 6' high open iron picket fence with 6' 4" high stone columns in one of the site's two required front yards (Orchid Lane) on a site developed with a single family home. While there is an approximately 9' high fence parallel to Orchid Lane, according to the applicant, this tall fence was built years prior to the construction proposed and is not part of the application to the Board. The subject site is zoned TH-1(A) which requires a 0' front yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is located at the southwest corner of Preston Road and Orchid Lane.
- Given the single family zoning and location of the corner lot subject site, it has two required front yards – a 0' front yard setback along Preston Road (the shorter of the two frontages of the subject site which is always a front yard in this case) and a 10' required front yard along Orchid Lane. While Orchid Lane is the longer of the two frontages on the subject site which is typically considered a side yard where on this TH-1(A) zoned property a 9' high fence could be erected by right, the site has a required 10' required front yard along Orchid Lane because of a platted building line and in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the west of the subject site "front" on Orchid Lane.

- The applicant has submitted a site plan and an elevation of the proposal fence in the front yard setback with notations indicating that the proposal reaches a maximum height of 6' 4".
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 10' in length perpendicular to Orchid Lane/parallel to the Preston Road.
  - The fence proposal is represented as being located approximately on the Orchid Lane front property line or approximately 12' from the pavement line.
- One single family lot fronts the proposal. This lot has no fence in a required front yard.
- The Board Administrator 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 March 10, 2017 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 standards of 2' 4" will not adversely affect neighboring property.
- Granting this special exception of 2' 4" 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 required front yard to be constructed and maintained in the location and of the heights and materials as shown on these documents.

**GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exception):**

- The request for a special exception to the visual obstruction regulations focuses on locating and maintaining a portion of a proposed approximately 10' long, 6' high open iron picket fence with 6' 4" high stone columns in the 45' visibility triangle at the intersection of Preston Road and Orchid Lane.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant submitted a site plan and an elevation representing that approximately 4' of the 10' long, 6' high open iron picket fence with 6' 4" high stone columns is located in the 45' visibility triangle at the intersection of Preston Road and Orchid Lane.
- The Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing how granting the request for special exception to the visual obstruction regulations to locate and maintain portions of a proposed approximately 10' long, 6' high open iron picket fence with 6' 4" high stone columns in the 45' visibility triangle at the intersection of Preston Road and Orchid Lane does not constitute a traffic hazard.

- Granting this request with the condition that the applicant complies with the submitted site plan and elevation would require the items in the visibility triangle to be limited to and maintained in the locations, height and materials as shown on these documents.

**Timeline:**

January 27, 2017: 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 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 15, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standards that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 9, 2017: The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet marked “Has no objections”.

**BOARD OF ADJUSTMENT ACTION MARCH 22, 2017**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Cannon

I move to grant that the Board of Adjustment grant application **BDA 167-034(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 site plan and elevation is required.

**SECONDED: Shouse**

**AYES:** 4 – Hounsel, Cannon, Shouse, Sibley

**NAYS:** 0

**MOTION PASSED** 4 – 0 (unanimously)

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**MOTION: Cannon**

I move to adjourn this meeting.

**SECONDED: Shouse**

**AYES:** 4 – Hounsel, Cannon, Shouse, Sibley

**NAYS:** 0

**MOTION PASSED** 4 – 0 (unanimously)

**1:36 P.M.** Board Meeting adjourned for **March 22, 2017**

\_\_\_\_\_  
CHAIRPERSON

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

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

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