

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1 AUDITORIUM  
TUESDAY, SEPTEMBER 20, 2016**

MEMBERS PRESENT AT BRIEFING: Michael Gibson, regular member, Elizabeth Nelson, regular member, Robert Agnich, Acting Vice Chair, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Clint Nolen, Vice Chair

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clay Buehrle, Engineering, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Michael Gibson, regular member, Elizabeth Nelson, regular member, Robert Agnich, Acting Vice Chair, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: Clint Nolen, Vice Chair

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clay Buehrle, Engineering, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

**11:15 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 20, 2016** docket.

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**1:00 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 August 16, 2016 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2016**

MOTION: None

The minutes were approved without a formal vote.

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA156-093

**REQUEST:** To reimburse the filing fee submitted in conjunction with requests for special exceptions to the fence height and visual obstruction regulations

**LOCATION:** 10715 Wyatt Street

**APPLICANT:** Karen Leger

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

The Dallas Development Code further states:

- The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
- In making this determination, the board may require the production of financial documents.

**Timeline:**

June 24, 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.

August 4, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

August 9, 2016: The applicant emailed a letter requesting a waiver of the filing fee regarding this application (see Attachment A).

- August 10, 2016: The Board Administrator forwarded the code provision as it related to the board of adjustment considering fee waiver and fee reimbursement requests, and given these provisions and the fact that the applicant had submitted the application, that the applicant consider redrafting a letter to request a *reimbursement* of the filing fee (see Attachment A).
- August 11, 2016: The applicant emailed the Board Administrator requesting the he place the fee reimbursement request on the docket, and that she would get the needed documents together to request the reimbursement (see Attachment A).
- August 12, 2016: The Board Administrator forwarded the code provision as it relates to fee reimbursements (Sec 51A-1.105(b)(6)) to the applicant, and informed her that typically when this type of request is made, the applicant will submit any additional documentation that shows how payment of the filing fee results in substantial financial hardship to the applicant (i.e. additional financial documents as in but not limited to copies of 1040's, W-4's, bank statements - *all with account numbers redacted*). The Board Administrator also emailed the applicant that the deadline to submit information to be included in the Board's docket was 1 p.m., September 9<sup>th</sup>.
- September 9, 2016: The Board Administrator spoke with the applicant and confirmed with her that the only information that she had submitted to be included in the Board's docket was the email that she had sent on August 11<sup>th</sup>. The applicant informed the Board Administrator that she would consider bringing any written documents to the public hearing with the documentary evidence rule in mind.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2016**

APPEARING IN FAVOR: Karen Leger, 10715 Wyatt Street, Dallas, TX  
Justin Leger, 10715 Wyatt Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gibson**

I move that the Board of Adjustment **deny** the request to reimburse the filing fee submitted in conjunction with requests for special exceptions to the fence height and visual obstruction regulations.

SECONDED: **Nelson**

AYES: 4 –Gibson, Nelson, Agnich, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

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**FILE NUMBER:** BDA156-095(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Lee Morris, represented by Elaine Pickering of Adams Engineering, for a special exception to the off-street parking regulations at 17610 Midway Road. This property is more fully described as Lot 1, Block V/8705, and is zoned CR, which requires parking to be provided. The applicant proposes to construct and/or maintain a structure for a restaurant with drive-in or drive-through service, restaurant without drive-in or drive-through service, general merchandise or food store 3500 square feet or less, personal service, dry cleaning or laundry store, motor vehicle fueling station, medical clinic or ambulatory surgical center, and office uses, and provide 250 of the required 288 parking spaces, which will require a 38 space special exception to the off-street parking regulations.

**LOCATION:** 17610 Midway Road

**APPLICANT:** Lee Morris  
Represented by Elaine Pickering of Adams Engineering

**REQUEST:**

A request for a special exception to the off-street parking regulations of 38 spaces is made to:

1. maintain the existing structure/tenant mix/uses (restaurant with drive-in or drive-through service; restaurant without drive-in or drive-through service; general merchandise or food store 3,500 square feet or less; personal service; dry cleaning or laundry store; motor vehicle fueling station; medical clinic or ambulatory surgical center; and office uses) on a site developed with a retail center (Bent Tree Midway Village Shopping Center); and
2. remodel one of the existing structures/uses within the center (McDonald's) by adding approximately 100 square feet of building area and a drive-through lane to it, and in the process eliminating approximately 10 existing off-street parking spaces.

The applicant proposes to provide 250 (or 87 percent) of the total 288 off-street parking spaces required to maintain the uses within the existing center and to make the minimal proposed improvements as described above to one of the structures/ uses on the subject site.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not

provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception of 38 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service; restaurant without drive-in or drive-through service; general merchandise or food store 3,500 square feet or less; personal service; dry cleaning or laundry store; motor vehicle fueling station; medical clinic or ambulatory surgical center; and office uses on the subject site are changed or discontinued.

Rationale:

- Staff concurs with the Sustainable Development and Construction Department Project Engineer who recommended approval of the applicant's request.
- Staff concluded that the applicant had substantiated that the parking demand generated by the restaurant with drive-in or drive-through service; restaurant without drive-in or drive-through service; general merchandise or food store 3,500 square feet or less; personal service; dry cleaning or laundry store; motor vehicle fueling station; medical clinic or ambulatory surgical center; and office uses on the subject site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**Zoning:**

- Site: CR (Community retail)
- North: R-7.5A) (Single family district 7,500 square feet)
- South: City of Carrollton
- East: D(A) (Duplex)
- West: CR (Community retail)

**Land Use:**

The subject site is developed with an existing shopping center (Bent Tree Midway Village Shopping Center). The area to the north is developed with single family uses; the area to the east is developed with duplex uses; the area to the south is the City of Carrollton (retail uses); and the area to the west is developed with retail 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 special exception to the off-street parking special exception regulations of 38 spaces focuses on: 1) maintaining the existing structure/tenant mix/uses (restaurant with drive-in or drive-through service; restaurant without drive-in or drive-through

service; general merchandise or food store 3,500 square feet or less; personal service; dry cleaning or laundry store; motor vehicle fueling station; medical clinic or ambulatory surgical center; and office uses) on a site developed with a retail center (Bent Tree Midway Village Shopping Center); and 2) remodeling one of the existing structures/uses within the center (McDonald's) by adding approximately 100 square feet of building area and a drive-through lane to it, and in the process eliminating approximately 10 existing off-street parking spaces.

- The applicant proposes to provide 250 (or 87 percent) of the total 288 off-street parking spaces required to maintain the uses within the existing center and to make the minimal proposed improvements as described above to one of the structures/uses on the subject site.
- The Dallas Development Code requires the following off-street parking requirements:
  - Restaurant with drive-in or drive-through service: 1 space per 100 square feet of floor area with a minimum of 4 spaces.
  - Restaurant without drive-in or drive-through service: 1 space per 100 square feet with a minimum of 4 spaces.
  - General merchandise or food store 3,500 square feet or less: 1 space per 200 square feet of floor area. If more than 10 off-street parking spaces are required, handicapped parking must be provided.
  - Personal service: 1 space per 200 square feet of floor area. If more than 10 off-street parking spaces are required, handicapped parking must be provided.
  - Dry cleaning or laundry store: 1 space per 200 square feet of floor area. If more than 10 off-street parking spaces are required, handicapped parking must be provided.
  - Motor vehicle or fueling station: 2 spaces.
  - Medical clinic or ambulatory surgical center: 1 space per 200 square feet of floor area. Handicapped parking must be provided.
  - Office use: 1 space per 333 square feet of floor area. If more than 10 off-street parking spaces are required, handicapped parking must be provided.
- The applicant has submitted a site plan that lists the uses and square footages of each business in the existing shopping center, and that the total number of spaces to be provided is 250 and that the total number of spaces required is 288.
- The applicant has submitted a study showing that the maximum observed parking demand for the shopping center (Bent Tree Midway Village) and the restaurant with drive-in service (McDonald's) on the subject site was 146 parking spaces. (The applicant proposes to provide 250 off-street parking spaces).
- The applicant states there are no proposed tenant or use changes for the property; and that while it was originally assessed that the existing shopping center has an excess of parking, it was later discovered when plans proceeded with adding the small addition and drive-through lane that the existing shopping center did not meet code hence the application for 38 spaces (10 spaces that will be lost with a new drive-through lane to an existing restaurant with drive-through service use on the site along with 28 spaces to remedy the existing shopping center and its tenants/uses that are not parked to code).
- The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing the following:

- The parking demand generated by the restaurant with drive-in or drive-through service; restaurant without drive-in or drive-through service; general merchandise or food store 3,500 square feet or less; personal service; dry cleaning or laundry store; motor vehicle fueling station; medical clinic or ambulatory surgical center; and office uses on the site does not warrant the number of off-street parking spaces required, and
- The special exception of 38 would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 38 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service; restaurant without drive-in or drive-through service; general merchandise or food store 3,500 square feet or less; personal service; dry cleaning or laundry store; motor vehicle fueling station; medical clinic or ambulatory surgical center; and office uses are changed or discontinued, the applicant would be allowed to maintain the existing uses in the center, and construct and maintain a small addition and drive-through lane to the existing restaurant with drive-through service use on the site with these specific uses and with the specified square footages, and provide 250 of the 288 code required off-street parking spaces.

**Timeline:**

- July 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.
- August 4, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 5, 2016: The Board Administrator contacted the applicant’s representative and emailed the following information:
- a copy of the application materials including the Building Official’s report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- September 6, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction 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, the Sustainable Development and Construction

Department Project Engineer, and the Assistant City Attorney to the Board.

September 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections".

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2016**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Nelson**

I move to grant that the Board of Adjustment grant application **BDA 156-095(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 special exception of 38 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service, restaurant without drive-in or drive-through service, general merchandise or food store 3,500 square feet or less, personal service, dry cleaning or laundry store, motor vehicle fueling station, medical clinic or ambulatory surgical center, and office uses on the property are changed or discontinued.

**SECONDED: Gibson**

AYES: 4 – Gibson, Nelson, Agnich, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

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**FILE NUMBER:** BDA156-087(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Toby Gray for special exceptions to the fence height and visual obstruction regulations at 611 Largent Avenue. This property is more fully described as Lots 1, 2, and part of Lot 9, Block C/2777, and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 611 Largent Avenue

**APPLICANT:** Toby Gray

**REQUESTS:**

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

1. A request for a special exception to the fence height regulations of up to 4' is made to maintain an existing cedar board-on-board fence (ranging from 5' 6" – 8' in height given grade changes on the property) in the site's Junius Street 30' front yard setback.
2. Requests for special exceptions to the visual obstruction regulations are made to maintain the aforementioned solid cedar board-on-board fence in the two, 20' visibility triangles on the both sides of the driveway into the site from Junius Street.

**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.

**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 height):**

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.

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

Denial

Rationale:

- Staff concurs with the Sustainable Development and Construction Department Project Engineer who had recommended denial of these requests from the information the applicant had submitted at the time of the September 6<sup>th</sup> staff review team meeting stating that the fence encroachment into the visibility triangles creates a safety hazard to pedestrian traffic.
- The applicant had not substantiated from the information that he had submitted at the time of the September 6<sup>h</sup> staff review team meeting how the location and maintenance of a 5' 6" – 8' cedar board-on-board fence in the two 20' drive approach visibility triangles into the site from Junius Street do not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

<u>Site:</u>	R-10(A) (Single family district 10,000 square feet)
<u>North:</u>	R-10(A) (Single family district 10,000 square feet)
<u>South:</u>	R-10(A) (Single family district 10,000 square feet)
<u>East:</u>	R-10(A) (Single family district 10,000 square feet)
<u>West:</u>	PD 397 (Planned Development)

**Land Use:**

The subject site is developed with a single family home. The areas to the north, south, and east west are developed with single family uses; and the area to the west is developed with retail 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 (fence height):**

- This request for a special exception to the fence height regulations of up to 4' focuses on maintaining an existing cedar board-on-board fence (ranging from 5' 6"– 8' in height given grade changes on the property) in the site's Junius Street 30' front yard setback.
- The subject site is zoned R-10(A) which requires a minimum front yard setback of 30'.
- 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 located at the south corner of Largent Avenue and Junius Street.
- Given the single family zoning and location of the corner lot subject site, it has two 30' front yard setbacks – a front yard setback along Largent Avenue (the shorter of the two frontages of the subject site which is always a front yard in this case) and a

front yard setback along Junius Street, (the longer of the two frontages which is typically considered a side yard where on this R-10(A) zoned property a 9' high fence could be erected by right). However the site has a front yard setback along Junius Street in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the southwest "front" on Junius Street.

- A scaled site plan and fence elevations have been submitted indicating a fence proposal that will reach 8' in height in the 30' Junius Street front yard setback.
- The submitted site plan represents only a fence to exceed 4' in height in the Junius Street front yard setback and not into the site's Largent Avenue front yard setback.
- The following information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 110' in length parallel to the Junius Street, and approximately 30' in length perpendicular to this street on the northeast and southwest sides of the site in this front yard setback.
  - The proposal is represented as being located mostly on the Junius Street front property line or approximately 11' from the pavement line. (Note that a small portion/length of the fence is noted to be located in the public right-of-way. While the site plan denotes "area of possible right-of-way widening (no documentation provided)", the request to the board of adjustment for the special exception to the fence height regulations will not remedy or address any portion of any item that is located in a right-of-way or easement. Any item located in a public right-of-way or easement will require a license from City Council or written approval by the agencies having interest in the easement).
- The proposal is located across from a properties developed with a nonresidential uses with no fence in the front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Junius Street (approximately 200' northeast and southwest of the subject site) and noted a no other fences that appeared to be above 4' in height in front yards.
- As of September 9, 2016, three letters had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception request of 4' with a condition imposed that the applicant complies with the submitted site plan and elevations would require the proposal exceeding 4' in height in the Junius Street front yard setback to be maintained in the location and of the heights and material as shown on these documents.
- Note that no part of this application to the Board will provide any relief to any item that may be located in a public right-of-way or easement.

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

- These requests for special exceptions to the visual obstruction regulations focus on maintain an existing cedar board-on-board fence (ranging from 5' 6" – 8' in height given grade changes on the property) in the two, 20' visibility triangles on the both sides of the driveway into the site from Junius Street.

- 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 elevations representing a solid cedar fence (ranging from 5' 6" – 8' in height given grade changes on the property) in the two, 20' visibility triangles on the both sides of the driveway into the site from Junius Street.
- The proposal is represented as being located mostly on the Junius Street front property line or approximately 11' from the pavement line. (Note that a small portion/length of the fence is noted to be located in the public right-of-way. While the site plan denotes "area of possible right-of-way widening (no documentation provided)", the request to the board of adjustment for the special exception to the visual obstruction regulations will not remedy or address any portion of any item that is located in a right-of-way or easement. (Any item located in a public right-of-way or easement will require a license from City Council or written approval by the agencies having interest in the easement).
- On September 7<sup>th</sup>, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following additional comment: "The fence encroachment into the visibility triangle creates a safety hazard to pedestrian traffic".
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations existing cedar board-on-board fence (ranging from 5' 6" – 8' in height given grade changes on the property) in the two, 20' visibility triangles on the both sides of the driveway into the site from Junius Street do not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the submitted site plan and elevations would require the items in the visibility triangles to be limited to and maintained in the locations, height and materials as shown on these documents.
- Note that no part of this application to the Board will provide any relief to any item that may be located in public right-of-way or easement.

**Timeline:**

- May 10, 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.
- August 4, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 5, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

September 6, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction 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, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following additional comment: "The fence encroachment into the visibility triangle creates a safety hazard to pedestrian traffic".

September 9, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A). Note that this information was not factored into the staff recommendation since it was submitted after the September 6<sup>th</sup> staff review team meeting.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2016**

APPEARING IN FAVOR: Toby Gray, 611 Largent Ave, Dallas, TX  
Collin O'Hara, 611 Largent Ave., Dallas, TX

APPEARING IN OPPOSITION: Donna Lake, 6216 Junius St., Dallas, TX  
Joel Bozath, 6216 Junius St., Dallas, TX

**MOTION: Agnich**

I move that the Board of Adjustment in Appeal No. **BDA 156-087**, hold this matter under advisement until **October 18, 2016**.

**SECONDED: Sibley**

**AYES:** 4 – Gibson, Nelson, Agnich, Sibley

**NAYS:** 0 -

MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER: BDA156-093(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Karen Leger for special exception to the fence height and visual obstruction regulations at 10715 Wyatt Street. This property is more fully described as Lot 17, Block 8/5364, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct and maintain a 9 foot high fence, which will require a 5 foot special exception to the fence height regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 10715 Wyatt Street

**APPLICANT:** Karen Leger

**REQUESTS:**

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

1. A request for a special exception to the fence height regulations of 5’ is made to replace an existing 6’ high open wrought iron picket fence with a solid cedar fence (ranging from 5’ 8” – 5’ 9” in height) to be located atop a proposed concrete retaining wall (ranging from 2’ 2” – 3’ 4” in height) in the site’s Maplegrove Lane 30’ required front yard.
2. Requests for special exceptions to the visual obstruction regulations are made to replace and maintain the aforementioned open wrought iron picket fence with a solid cedar fence in: 1) the 20’ visibility triangle on the south side of the driveway into the site from Maplegrove Lane, and 2) the 45’ visibility triangle at the intersection of Maplegrove Lane and Wyatt Street.

**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.

**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 height):**

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.

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

Denial of the request for a special exception to the visual obstruction regulations related to locating and maintaining a solid cedar fence in the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane

Rationale:

- Staff concurs with the Sustainable Development and Construction Department Project Engineer who recommended denial of this request stating that the proposed fence in this triangle would create a safety hazard to pedestrian traffic.
- The applicant had not substantiated how the location and maintenance of the proposed fence in this 20' drive approach visibility triangle does not constitute a traffic hazard.

Approval of the request for a special exception to the visual obstruction regulations related to locating and maintaining a solid cedar fence in the 45' visibility triangle at the intersection of Maplegrove Lane and Wyatt Street, subject to the following condition:

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

Rationale:

- Staff concurs with the Sustainable Development and Construction Department Project Engineer who has no objection to that the proposed fence in this triangle.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

## **Zoning/BDA History:**

1. Miscellaneous Item #2, BDA 156-093, Property at 10715 Wyatt Street ( the subject site)      On September 20, 2016, the Board of Adjustment Panel A will consider reimbursing the filing fee made in conjunction with this application.

## **GENERAL FACTS/STAFF ANALYSIS (fence height):**

- This request for a special exception to the fence height regulations of 5' focuses on replacing an existing 6' high open wrought iron picket fence with a solid cedar fence (ranging from 5' 8" – 5' 9" in height) to be located atop a proposed concrete retaining wall (ranging from 2' 2" – 3' 4" in height) in the site's Maplegrove Lane 30' required front yard.
- The subject site is zoned R-7.5(A) which requires a minimum front yard setback of 25'. The subject site has a 30' platted building line on both Maplegrove Lane and Wyatt Street.
- 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 located at the northeast corner of Maplegrove Avenue and Wyatt Street.
- Given the single family zoning and location of the corner lot subject site, it has two required front yards. The site has a 30' required front yard along Maplegrove Lane (the shorter of the two frontages of the subject site which is always a front yard), and a 30' required front yard along Wyatt Street, (the longer of the two frontages which is typically considered a side yard where on this R-7.5(A) zoned property a 9' high fence could be erected by right). However the site has a required front yard along Wyatt Street in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the east "front" on Wyatt Street.
- A scaled site plan/fence elevation has been submitted indicating a fence proposal that will reach 9' in height in the 30' Maplegrove Lane required front yard.
- The applicant has stated that the proposed solid cedar fence would be in approximately the same location as the existing open wrought iron picket fence on the property.
- The following information was gleaned from the submitted site plan/elevation:
  - The proposal is represented as being approximately 56' in length parallel to the Maplegrove Lane, and 30' in length perpendicular to this street on the north and south sides of the site in this required front yard.
  - The proposal is represented as being located approximately on the Maplegrove Lane front property line or 12' from this pavement line.
- The proposal is located across from a lot developed with a single family home that fronts south to Wyatt Street with no fence in the front yard setback.

- The Board Administrator conducted a field visit of the site and surrounding area along Maplewood Lane (approximately 200' north and south of the subject site) and noted a no other fences that appeared to be above 4' in height in front yards.
- As of September 9, 2016, a petition with 14 signatures and two letters has 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 5' will not adversely affect neighboring property.
- Granting this special exception request of 5' with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 4' in height in the Maplegrove Lane required front yard to be constructed and maintained in the location and of the heights and material as shown on this document.

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

- These requests for special exceptions to the visual obstruction regulations focus on replacing an existing 6' high open wrought iron picket fence with a solid cedar fence (ranging from 5' 8" – 5' 9" in height) to be located atop a proposed concrete retaining wall (ranging from 2' 2" – 3' 4" in height) in: 1) the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane, and 2) the 45' visibility triangle at the intersection of Maplegrove Lane and Wyatt Street.
- 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 has submitted a site plan/elevation representing a solid cedar fence (ranging from 5' 8" – 5' 9" in height) to be located atop a proposed concrete retaining wall (ranging from 2' 2" – 3' 4" in height) in: 1) the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane, and 2) the 45' visibility triangle at the intersection of Maplegrove Lane and Wyatt Street.
- The applicant has stated that the proposed solid cedar fence would be in approximately the same location as the existing open wrought iron picket fence on the property.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following additional comment: "There are no objections to the proposed fence encroachment into the intersection visibility triangle. Engineering recommends denial of the proposed fence into the driveway visibility triangle as this would create a safety hazard to pedestrian traffic".

- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain a solid cedar fence (ranging from 5' 8" – 5' 9" in height) to be located atop a proposed concrete retaining wall (ranging from 2' 2" – 3' 4" in height) in: 1) the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane, and 2) the 45' visibility triangle at the intersection of Maplegrove Lane and Wyatt Street do not constitute a traffic hazard.
- The Board can make a separate determination of the requests for special exceptions to the visual obstruction regulation in this application. Granting both or one of these requests with the condition that the applicant complies with the submitted site plan/elevation would require the items in the visibility triangles to be limited to and maintained to the locations, height and materials as shown on this document.

**Timeline:**

- June 24, 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.
- August 4, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 5, 2016: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<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 requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- September 6, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction 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, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following additional comment: "There are no objections to the proposed fence encroachment into the intersection visibility triangle. Engineering recommends denial of the proposed fence into the driveway visibility triangle as this would create a safety hazard to pedestrian traffic".

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2016**

**APPEARING IN FAVOR:** Karen Leger, 10715 Wyatt St, Dallas, TX  
Justin Leger, 10715 Wyatt St., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Sibley

I move that the Board of Adjustment in Appeal No. **BDA 156-093**, hold this matter under advisement until **October 18, 2016**.

**SECONDED:** Gibson

**AYES:** 4 –Gibson, Nelson, Agnich, Sibley

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA156-091(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Thomas Barnhart for a variance to the off-street parking regulations at 5017 W. Lovers Lane. This property is more fully described as Lot 34, Block A/5006, and is zoned CR, which requires that the owner of off-street parking must provide screening to separate the parking area from a contiguous residential use or vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use. The applicant proposes to construct and/or maintain a structure and not provide the required screening, which will require a variance to the off-street parking regulations.

**LOCATION:** 5017 W. Lovers Lane

**APPLICANT:** Thomas Barnhart

**REQUEST:**

A request for a variance to the off-street parking regulations, more specifically the screening provisions for off-street parking, is made to lease and maintain a general merchandise or food store less than 3,500 square foot use on the subject site that is developed with a vacant nonresidential structure, and with no screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use.

**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, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant had not substantiated how the physical features of the flat, rectangular in shape (59'x 25'), 0.8 acres (or approximately 3,500 square feet) site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
- Staff concluded that any hardship in this case is self-created in that the required screening that the applicant seeks variance for is prompted by the applicant's proposal/choice to obtain a certificate of occupancy (CO) for a new general merchandise or food store less than 3,500 square foot use that requires a greater number of off-street parking spaces than the original use, and that the City could issue a new CO to the applicant for the same use that had occupied the site with no screening required or variance to the off-street parking regulations related to screening required.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	CR (Community retail)
<u>North:</u>	R-7.5(A) (Single family residential 7,500-square feet)
<u>South:</u>	PD 771 & MC-1 (Planned Development and Multiple commercial)
<u>East:</u>	CR (Community retail)
<u>West:</u>	CR (Community retail)

### **Land Use:**

The subject site is developed with a vacant nonresidential structure. The area to the north is developed with a single family residential; the areas to the east and west are developed with retail uses; and the area to the south appears to be developed with office 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 (screening of off-street parking variance):**

- This request for a variance to the off-street parking regulations focuses on leasing and maintaining a general merchandise or food store less than 3,500 square foot use on the subject site that is developed with a vacant nonresidential structure, and with no screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- The Dallas Development Code states the following related to the screening of off-street parking:
  - (1) The owner of off-street parking must provide screening to separate the parking area from:
    - (A) a contiguous residential use or vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use; or
    - (B) a contiguous single family or duplex use or a vacant lot if any of these are in an R, R(A), D, D(A), TH, TH(A), or CH district and the parking area serves a multifamily use.
  - (2) If an alley separates a parking area from another use, the use is considered contiguous to the parking area. If a street separates a parking area from another use, the use is not considered contiguous to the parking area.
- The Dallas Development Code states that the screening for off-street parking required under Subsection (f)(1) must be a brick, stone, or concrete masonry, stucco, concrete, or wood wall or fence that is not less than six feet in height. The wall or fence may not have more than ten square inches of open area for each square foot of surface area, and may not contain any openings or gates for

vehicular access. The owner of off-street parking must maintain the screening in compliance with these standards.

- The applicant submitted a site plan that indicates no screening to be provided between the off-street parking on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- Building Inspection has stated that the required screening that the applicant seeks variance for is prompted by the applicant's proposal/choice to obtain a certificate of occupancy (CO) for a new use that requires a greater number of off-street parking spaces than the original use, and that the City could issue a new CO to the applicant for the same use that had occupied the site with no screening required or variance to the off-street parking regulations related to screening required.
- According to DCAD records, the "improvements" for property addressed at 5017 W. Lovers Lane is a 1,500 square foot "free standing retail store" constructed in 1946.
- The subject site is flat, rectangular in shape (59'x 25'), and according to the application, 0.8 acres (or approximately 3,500 square feet) in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
  - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the applicant would be able to lease the vacant nonresidential structure on the site as a general merchandise or food store less than 3,500 square foot use with no screening between the required off-street parking for this proposed use on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.

**Timeline:**

- July 12, 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.
- August 4, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

August 5, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

September 6, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction 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, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2016**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

\*Member Sibley was excused and left the meeting for the day. The quorum of members was lost as a result of having only three members present. No formal motion made on this application, and the hearing/action on it was postponed until **October 18, 2016**.

**MOTION: Agnich**

I move to adjourn this meeting.

**SECONDED: Gibson**

**AYES: 3 – Gibson, Nelson, Agnich,**

**NAYS: 0 -**

**MOTION PASSED: 3 – 0**

**2:13 P. M.:** Board Meeting adjourned for **September 20, 2016**

\_\_\_\_\_  
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.