

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, DECEMBER 12, 2016**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Marla Beikman, regular member, Alex Winslow, regular member, Phil Foster, regular member and Cheri Gambow, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Marla Beikman, regular member, Alex Winslow, regular member, Phil Foster, regular member and Cheri Gambow, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Laura Morrison, Asst. City Attorney, Todd Duerksen, Dev. Code Specialist, Clay Buerhle, Engineering, Jennifer Munoz, Senior Planner, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, David Cossum, Director, Laura Morrison, Asst. City Attorney, Todd Duerksen, Dev. Code Specialist, Clay Buerhle, Engineering, Jennifer Munoz, Senior Planner, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner and Trena Law, Board Secretary

10:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **December 12, 2016** docket.

1:05 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, November 14, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: DECEMBER 12, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-120(JM)

BUILDING OFFICIAL'S REPORT: Application of Robert Reeves for a variance to the front yard setback regulations at 5130 Radbrook Place. This property is more fully described as Lot 7, Block 12A/5585, and is zoned R-1ac(A), which requires a front yard setback of 40 feet. The applicant proposes to construct and maintain a structure and provide a 32 foot front yard setback, which will require an 8 foot variance to the front yard setback regulations.

LOCATION: 5130 Radbrook Place

APPLICANT: Robert Reeves

REQUEST:

A request for a variance to the front yard setback regulations of 8' is made to construct/maintain a structure, part of which is located 32' from the site's front property line along Northwest Highway, or 8' into the 40' front yard setback.

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:

Approval of the request, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the variance should be granted because the subject site is unique and different from other lots in the R-1ac(A) Single Family District by being of a restrictive area (only approximately 42,131 square feet - less than the typical lot size of 43,560 square feet typical in the zoning district).
- Additionally, staff concluded that the variance should be granted because the subject site has three front yards, each with a 40' front yard setback, further encumbering the commensurate use of the subject land area.

BACKGROUND INFORMATION:

Zoning:

- Site: R-1ac(A) (Single family residential 1 acre)
- North: R-1ac(A) (Single family residential 1 acre)
- South: R-1ac(A) (Single family residential 1 acre)
- East: PD No. 815
- West: R-1ac(A) (Single family residential 1 acre)

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. A church is to the east.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing a pool structure addition to an existing single family home, part of which is located 8' inside of the site's 40' front property line along Northwest Highway.
- The subject site is located at the northwest intersection of Radbrook Place, Inwood Road, and Northwest Highway.
- Lots zoned R-1ac(A) are required to provide a minimum front yard setback of 40'.
- The subject site is a corner lot with three street frontages. It is located between Radbrook Place on the north, Northwest Highway to the south, and Inwood Road on the east which is the shorter of the three frontages and is always considered the front yard. Regardless of how the single-family structure on the site is oriented with the front on Radbrook Place, the back to Northwest Highway, and the side along Inwood Road, the site has three 40' front yard setbacks. The Dallas Development Code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets. Additionally, the shorter frontage (along Inwood Road) is always considered the front yard.
- The subject property would like to provide a 32' front yard setback along Northwest Highway.
- According to DCAD records, the "main improvement" for property addressed at 5130 Radbrook Place is a structure built in 1984 with 9,953 square feet of living area with a 912 square foot attached brick garage as an additional improvement.
- A site plan has been submitted identifying the new pool structure to add 819 square feet to the total square footage, of which about 312 square feet is proposed to be within the required 40' front yard setback along Northwest Highway.
- According to calculations taken by the Board Senior Planner from the submitted site plan, the addition in Northwest Highway front yard setback accounts for about 3 percent of the total square footage of the existing single family home on the subject site.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) zoning classification.
- If the board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a portion of a structure located as close as 32’ from the site’s front property line along Northwest Highway (or 8’ into the 40’ front yard setback).
- Furthermore, granting this request for variance would not provide relief to remedy any nonconforming structure on the site or any existing/proposed noncompliance with the fence height regulations.

Timeline:

- September 21, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- November 8, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 11, 2016: The Board Administrator shared the following information with the applicant’s representative via email:
- 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd 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.”

November 29, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: 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, 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: DECEMBER 12, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move to grant that the Board of Adjustment grant application **BDA 156-120(JM)** 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 is required.

SECONDED: **Winslow**

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA156-121(SL)

BUILDING OFFICIAL’S REPORT: Application of Gustavo Ferrusca, Jr. for a special exception to the fence standards at 5806 Joyce Way. This property is more fully described as a 0.42 acre tract in Block 5612, and is zoned R-1ac(A), which limits the height of a fence to 4 feet. The applicant proposes to construct and maintain a 6 foot high fence, which will require a 2 foot special exception to the fence standards.

LOCATION: 5806 Joyce Way

APPLICANT: Gustavo Ferrusca, Jr.

REQUEST:

A request for a special exception to the fence standards related to fence height of 2’ is made to replace an approximately 5’ high open metal fence in the front yard setback (that appears to be a result of special exception granted by the Board in 1995) with a 6’ high open tube/rod fence on a site that is 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)(SUP 29) (Single family district 1 acre)(Specific Use Permit)

Land Use:

The subject site is developed with a single family home. The areas to the north, south, and east are developed with single family uses; and the area to the west is developed with an institutional use (Congregation Shearith Israel).

Zoning/BDA History:

1. BDA95-034, Property located at 5806 Joyce Way (the subject site)
On March 28, 1995, the Board of Adjustment granted a request for special exception to the fence height regulations of 8' and imposed the submitted site plan/elevation as a condition.
The case report stated that the request was made to construct a 5' high open metal fence on a wood base with 6' high wood columns along Joyce Way and Douglas Avenue, and that the request for the maximum 8' fence height special exception was only for one 12' high wood canopy that would be gabled and approximately 10' in length.

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the fence standards related to fence height of 2' focuses on replacing an approximately 5' high open metal fence in the front yard setback (that appears to be a result of special exception granted by the Board in 1995) with a 6' high open tube/rod fence on a site that is developed with a single family home.
- The subject site is zoned R-1ac(A).
- 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 southeast corner of Joyce Way and Douglas Avenue.
- The subject site has one 40' front yard setback along Joyce Way (the shorter of the two frontages of the subject site which is always a front yard in this case) and a side setback along Douglas Avenue (the longer of the two frontages) where there is no continuity of a front yard setback to be maintained along Douglas Avenue to the south. The property to the south of the subject site fronts southward to Lupton Drive and does not require a special exception.
- The applicant has submitted a site plan and elevation of the proposal with notations indicating that the proposal reaches a maximum height of 6'.
- 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 35' in length parallel to Joyce Way.

- The fence proposal is represented as being located approximately 36’ from the front lot line/pavement line.
- One single family lot with no fence fronts the existing/proposed fence.
- 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 December 2, 2016, 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 2’ 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:

August 23, 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.

November 8, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 8, 2016: 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd 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.

November 29, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: 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, 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: DECEMBER 12, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move to grant that the Board of Adjustment grant application **BDA 156-121(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: Winslow

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA156-123(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the fence standards at 5326 Edlen Drive. This property is more fully described as Lot 2, Block 2/5603, 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 a 6 foot 3 inch high fence, which will require a 2 foot 3 inch special exception to the fence standards.

LOCATION: 5326 Edlen Drive

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a special exception to the fence standards related to fence height of 2’ 3” is made to construct and maintain a fence higher than 4’ (a 6’ high open wrought iron fence with 6’ 3” high plaster columns, and two 6’ 3” high open decorative iron gates) in the front yard setback 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 being developed with a single family home. The areas to the north, south, east, and west are developed or being developed with single family uses.

Zoning/BDA History:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. BDA078-058, Property located at 5327 Edlen Drive (the property north of the subject site) | <p>On April 16, 2008, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 3' 6" and imposed the submitted site plan and elevation as a condition.</p> <p>The case report stated that the request was made to construct and maintain a 6' 10" high open wrought iron fence/gates with 7' 6" high columns in the 40' front yard setback.</p> |
|--|---|

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the fence standards related to fence height of 2' 3" focuses on constructing and maintaining a 6' high open wrought iron fence with 6' 3" high plaster columns, and two 6' 3" high open decorative iron gates in the front yard setback on a site that is being developed with a single family home.

- The subject site is zoned R-1ac(A).
- 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/elevation of the proposal with notations indicating that the proposal reaches a maximum height of 6' 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 176' in length parallel the street, and 40' in length perpendicular to the street on the east and west sides of the site in the front yard setback.
 - The fence proposal is represented as being located approximately on the front property line or approximately 10' from the pavement line. The gates are represented as being located approximately 13' from the property line or approximately 23' from the pavement line.
- One single family lot fronts the proposed fence which has an approximately 6' high open metal fence that appears to be a result of a granted fence height special exception in 2008 (BDA078-058).
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences other than the one mentioned above that appeared to be above 4' in height and located in a front yard setback.
- As of December 2, 2016, 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 2' 3" will not adversely affect neighboring property.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan/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 this document.

Timeline:

- October 7, 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.
- November 8, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 8, 2016: 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd 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.

November 29, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: 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, 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: DECEMBER 12, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move to grant that the Board of Adjustment grant application **BDA 156-123(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/elevation is required.

SECONDED: **Winslow**

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA156-126(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the fence standards at 5838 Woodland Drive. This property is more fully described as Lot 2, Block B/5616, and is zoned R-1ac(A), which limits the height of a fence to 4 feet. The applicant proposes to construct and maintain a 7 foot 11 inch high fence, which will require a 3 foot 11 inch special exception to the fence standards.

LOCATION: 5838 Woodland Drive

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a special exception to the fence standards related to fence height of 3’ 11” is made to construct and maintain a fence higher than 4’ (a 4’ 7” high open wrought iron fence with 5’ high brick columns, and two 7’ 11” high open decorative iron gates flanked by 5’ – 6’ 6” high, 10’ 6’ long masonry wing walls) in the front yard setback 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 being developed with a single family home. The areas to the north, south, east, and west are developed or being developed with single family uses.

Zoning/BDA History:

1. BDA123-033, Property located at 5833 Woodland Drive (the property north of the subject site)

On April 16, 2013, the Board of Adjustment Panel A granted requests for special exceptions to the fence height regulations of 3' 6" and visual obstruction regulations and imposed the submitted site plan/elevation and landscape elevations as a condition.

The case report stated that the special exception to the fence height regulations of 3' 6" were requested in conjunction with constructing and maintaining a 6' 6" high open metal fence with 7' 6" high masonry columns, two 4' 6" – 6' 6" high gates with flanking approximately 20' long, 6' 6" high solid masonry wing walls in the front yard setback; and that the special exceptions to the visual obstruction regulations are requested in conjunction with locating and maintaining four 6' 6" high solid limestone columns in the 20' visibility triangles on either side of the two driveways into the site from Woodland Drive.

2. BDA86-197, 9006 Douglas Avenue (two lots northwest of the subject site)

On September 9, 1986, the Board of Adjustment granted a request to the fence height special regulations of 3' 10". The board imposed the following conditions with the request: compliance with notations on a site plan marked "Exhibit A" is required and "that the landscape submitted the Board be used." The case report discussed in its "Staff Comments" section that the fence along Woodland Drive to be setback 8' from the property line to allow for landscaping which would reduce the impact of the solid fence on the street" with the remainder of the fence along Woodland Drive and Douglas Avenue "should be wrought iron to reduce the "solidness" of the fence."

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the fence standards related to fence height of 3' 11" focuses on constructing and maintaining a 4' 7" high open wrought iron fence with 5' high brick columns, and two 7' 11" high open decorative iron gates flanked by 5' – 6' 6" high, 10' 6' long masonry wing walls on a site that is being developed with a single family home.
- The subject site is zoned R-1ac(A).
- 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/elevation of the proposal with notations indicating that the proposal reaches a maximum height of 7' 11".
- 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 176' in length parallel the street, and 34' - 40' in length perpendicular to the street on the east and west sides of the site in the front yard setback.
 - The fence proposal is represented as being located approximately on the front property line or approximately 15' from the pavement line. The gates are represented as being located approximately 7' from the property line or approximately 22' from the pavement line.
- One single family lot fronts the proposed fence which has an approximately 6' high open metal fence that appears to be a result of a granted fence height special exception in 2013 (BDA123-033).
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence in addition to the one mentioned above that appeared to be above 4' in height and located in a 40' front yard setback in this block of Woodland Drive from Douglas Avenue to Preston Road: an approximately 6.5 high open wrought fence and solid brick wall (located behind significant landscape materials) immediately northwest of the site (and what appears to be the result of board action made in conjunction with BDA 86-197).
- As of December 2, 2016, 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 3' 11" will not adversely affect neighboring property.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan/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 this document.

Timeline:

October 7, 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.

November 8, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 8, 2016: 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd 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.

November 29, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: 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, 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: DECEMBER 12, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move to grant that the Board of Adjustment grant application **BDA 156-126(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/elevation is required.

SECONDED: Winslow

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA156-129(SL)

BUILDING OFFICIAL’S REPORT: Application of Ron Ragsdale, represented by Jeff Innmon, for a special exception to the landscape regulations at 1920 McKinney Avenue. This property is more fully described as Lot 3B, Block 524, and is zoned PD 193 (HC), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 1920 McKinney Avenue

**APPLICANT: Ron Ragsdale
Represented by Jeff Innmon**

December 12, 2016 Public Hearing Notes:

- The applicant’s representative submitted a landscape plan to the Board at the public hearing.

REQUEST:

A request for a special exception to the landscape regulations is made to obtain a final building permit for a multi-story office structure on a site, and not fully provide required landscaping.

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist supports the applicant's request because the applicant has reasonably demonstrated the proposed alternate landscape plan does not compromise the spirit and intent of the PD 193 landscape requirements for HC districts.
- In this case, the Chief Arborist notes among other things how the alternative landscape plan submitted for this application is a revision to a plan approved by the Board of Adjustment in case BDA 134-124 in December 2014 – revisions that include: 1) a valet station on Harwood Street, and 2) a designated dining area with landscaping and improvements at the corner of Harwood Street and McKinney Avenue. (The street tree alignment along Harwood Street was amended for the valet).

BACKGROUND INFORMATION:

<u>Site:</u>	PD 193 (HC) & PDS 66 (Planned Development, Heavy Commercial, Planned Development)
<u>North:</u>	PD 193 (PDS 68) (Planned Development, Planned Development)
<u>South:</u>	PD 193 (HC) & PDS 66 (Planned Development, Heavy Commercial, Planned Development)
<u>East:</u>	PD 193 (PDS 68) (Planned Development, Planned Development)
<u>West:</u>	PD 193 (PDS 66) (Planned Development, Planned Development)

Land Use:

The subject site is developed with a multi-story office structure awaiting a final building permit. The areas to the north, south, east, and west are developed with a mix of office, residential, and retail uses.

Zoning/BDA History:

1. BDA134-124, Property at 1920 McKinney Avenue (the subject site)

On December 15, 2014, the Board of Adjustment Panel C granted a request for a special exception to the landscape regulations, and imposed the submitted alternate landscape plan as a condition to the request.

The case report stated that this request was made to construct and maintain a multi-story office use/structure on a site currently under development, and not fully provide required landscaping.

- | | |
|---|--|
| <p>2. BDA 134-086, Property at 1907 McKinney Avenue (the lot southwest of the subject site)</p> | <p>On September 16, 2014, the Board of Adjustment Panel A granted a request for a special exception to the landscape regulations, and imposed the submitted alternate landscape plan as a condition to the request. The case report stated that this request was made to construct and maintain a surface parking lot on site developed with an office structure/use (HKS) - a structure that according to the application was developed prior to the landscape ordinance adopted in the mid 80's.</p> |
| <p>3. BDA 967-300, Property at 1907 McKinney Avenue (the lot southwest of the subject site)</p> | <p>On October 28, 1997, the Board of Adjustment Panel A was informed that the originally submitted request for a special exception to the landscape regulations was removed from the docket since it had been determined by staff that the request originally heard on September 23, 1997 was not required.</p> |

GENERAL FACTS/ STAFF ANALYSIS:

- This request for a special exception to the landscape regulations focuses on obtaining a final building permit for a multi-story office structure on a site, and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the proposed alternate landscape plan would reduce the required number of trees in the tree planting zone from 12 to 10 trees, and does not present a minimum 10 foot wide garage screening buffer on the sides of the building facing the streets. Although a 6' sidewalk width is provided on the private property on the landscape plan, the required location by ordinance is disrupted by a new introduction of steps and walkway with rails.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new construction.

- The Chief Arborist's memo lists the following factors for consideration:
 - The alternative landscape plan submitted for this application is a revision to a plan approved by the Board of Adjustment in case # BDA 134-124 in December 2014. New amendments include: 1) a valet station on Harwood, and 2) a designated dining area with landscaping and improvements at the corner of Harwood and McKinney. The street tree alignment along Harwood Street was amended for the valet.
 - PD 193 (HC) does not have requirements for landscape site area, but only specifies street trees, sidewalks, and screening.
 - A portion of the property is zoned PDS 66 which requires a minimum 10 foot wide sidewalk and two pedestrian-scale lighting fixtures within that area along Harwood Street. These provisions are not subject to a special exception with this request and the PDS 66 site complies with these measures.
 - The applicant is planting 10 total trees (6 along Harwood), to be spaced about 25' - 30' on center along Harwood Street, with the exception of a break in continuity to make space for a valet staging area and ramp, and then 24' on center (4 trees) along McKinney Avenue.
 - PD 193 states "aboveground parking structures must have a 10' landscaping buffer on any side facing a public right-of-way" and "the buffer must contain one tree for every 25' of frontage and evergreen shrubs planted 3' on center."
 - In this particular design, the majority of the aboveground parking structure within the non-residential building is above the street-level retail units, and hidden behind an enhanced facade that rises for several levels. Additional garage levels are below grade and have no landscape requirement or site impact. All street-level garage frontage with Harwood Street and McKinney Avenue is exposed primarily at the garage entryways only, being where no buffer strip would be required.
 - The building, and paved exterior, were designed for the purpose of safe and direct pedestrian access from the street to street-level retail uses and other pedestrian entryways. Placement of buffer landscaping could conflict with accessing the retail uses in this heavy commercial district.
- The City of Dallas Chief Arborist recommends approval of this request because the applicant has reasonably demonstrated the proposed alternate landscape plan does not compromise the spirit and intent of the PD 193 landscape requirements for HC districts.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the tree planting zone and garage screening buffer requirements) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards".
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to tree planting zone (lesser number of trees) and garage screening buffer requirements of the Oak Lawn PD 193 landscape ordinance.

Timeline:

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

November 8, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

November 8, 2016: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 23rd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd 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.

November 29, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: 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, 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.

December 2, 2016: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: DECEMBER 12, 2016

APPEARING IN FAVOR: Jeff Innmon, 8115 Preston Road, Dallas, TX
David Cossum, 1500 Marilla St., Dallas, TX

APPEARING IN OPPOSITION: Dick Brink, 1999 McKinney

MOTION: Beikman

I move that the Board of Adjustment, in request No. **BDA 156-129**, on application of Ron Ragsdale, **grant** the special exception to the landscape regulations in PD-193 because our evaluation of the property and the testimony shows that the special exception will not compromise the spirit and intent of the ordinance. I further move that the following conditions be imposed to further the purpose and intent of the Oak Lawn Ordinance:

- Compliance with the submitted alternate landscape plan dated 12-6-16 is required with the option to relocate the stairway and the ramp between where they are located on the plan and the curb which would result in the elimination of one street tree leaving a minimum of 6 street trees.

SECONDED: Winslow

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA156-122(SL)

BUILDING OFFICIAL’S REPORT: Application of Colin Watson to appeal the decision of the administrative official at 1014 Clermont Avenue. This property is more fully described as Lot 25, Block 26/2226, and is zoned CD 6, which prohibits brick surfaces not previously painted from being painted unless the applicant establishes that (A) the color and texture of replacement brick cannot be matched with that of an existing brick surface, and that (B) the brick is not original or compatible with the style and period of the main structure. The applicant proposes to appeal the decision of an administrative official that the applicant has not provided proof that the brick cannot be matched per the ordinance. It is the opinion of conservation district staff that the current replacement brick is compatible with the style and period of the main structure.

LOCATION: 1014 Clermont Avenue

APPLICANT: Colin Watson

REQUEST:

The submitted application states that “an appeal of an administrative official’s decision” is made and that “denial was issued based on Ord. 26884(7)(j)(1)(A) ‘Brick surfaces not previously painted must not be painted unless the applicant established that (A) the color and texture of replacement brick cannot be matched with that of existing brick surface.’ We intend to prove that the brick cannot be matched and should be allowed to be painted.”

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

BACKGROUND INFORMATION:

Zoning:

Site: CD 6, Conservation District
North: CD 6, Conservation District
South: CD 6, Conservation District
East: CD 6, Conservation District
West: CD 6, Conservation District

Land Use:

The subject site is developed with a single family use. 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:

- The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

Timeline:

September 20, 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.

November 8, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 8, 2016: 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of application); and the December 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

November 29, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: 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, 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: DECEMBER 12, 2016

APPEARING IN FAVOR: Brian Oates, 2323 Ross Ave, Dallas, TX
Colin Watson, 1014 Clermont Ave, Dallas, TX
Stas Getmanenko, 923 Monte Vista, Dallas, TX

APPEARING FOR THE CITY: Kristen Monkhouse, 1500 Marilla, St., 7DN, Dallas, TX
Bill Hersch, 320 E. Jefferson, Dallas, TX

APPEARING IN OPPOSITION: Ed Zahra, 1003 Valencia, Dallas, TX

MOTION: Beikman

In Appeal No. BDA No. 156-122 on Application of Colin Watson, after having fully reviewed the decision of the administrative official, and having evaluated the evidence and heard all of the testimony and facts, I move that the Board of Adjustment **affirm** the decision of the administrative official and **deny** the relief requested by the applicant **without prejudice**.

SECONDED: Foster

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA156-124(SL)

BUILDING OFFICIAL’S REPORT: Application of Richel Francis for a special exception to restore a nonconforming use at 1005 W. Wheatland Road. This property is more fully described as a 7.37 acre tract in Block 7525, and is zoned MF-1(A) & PD-598 (Tract 1B), which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming multifamily use, which will require a special exception to the nonconforming use regulations.

LOCATION: 1005 W. Wheatland Road

APPLICANT: Richel Francis

December 12, 2016 Public Hearing Notes:

- The Board Administrator forwarded additional information submitted by the applicant to the Board at the briefing.

REQUEST:

A request for a special exception to restore/reinstate nonconforming use rights for a multifamily use on the subject site that was discontinued for a period of six months or more is made to obtain a Certificate of Occupancy (CO) for this use.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas Development Code states that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

BACKGROUND INFORMATION:

Zoning:

Site: PD 598 (Tract 1) & MF-1(A)(Planned Development and Multifamily)
North: R-7.5(A) (Single family residential 7,500 square feet)
South: PD 598 (Tract 3)(Planned Development)
East: MF-1(A)(Multifamily)
West: PD 598 (Tract 1)(Planned Development)

Land Use:

The subject site is developed with a vacant multifamily use. The area to the north is developed with single family uses, the area to the east is developed with multifamily use; the area to the south is undeveloped, and the area to the west is developed with commercial/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 request focuses on restoring/reinstating nonconforming use rights for a multifamily use that has been discontinued for six months or more in order for the applicant to obtain a Certificate of Occupancy (CO) for this use.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time”.
- The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The nonconforming use regulations also state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The vast majority of land area in the subject site is zoned PD 598 (Tract 1) – a zoning district that does not permit a multifamily use at this location.

- A document has been included in the case file that states the multifamily use at 1005 W. Wheatland Road has been identified by Building Inspection to be a nonconforming use.
- According to DCAD records, the “improvements” for the property addressed at 1005 W. Wheatland Road is a 68,586 square foot “apartment” constructed in 1964.
- Building Inspection has stated that these types of special exception requests originate from when an owner/officer related to the property applies for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming multifamily use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming multifamily use rights that were lost when the use was abandoned for a period of six months or more.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

Timeline:

October 13, 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.

November 8, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 8, 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd 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;

- the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

November 29, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: 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, 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.

December 2, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B, and C).

BOARD OF ADJUSTMENT ACTION: DECEMBER 12, 2016

APPEARING IN FAVOR: Elsie Thurman, 9406 Biscayne Blvd, Dallas, TX
 Richel Francis, 1005 W wheatland RD, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Winslow**

I move that the Board of Adjustment, in request No. **BDA 156-124**, on application of Richel Francis, **grant** the request of this applicant for a special exception to the provision found in Section 51A-4.704(a)(2) of the Dallas Development Code providing that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, because the owner of the property has shown that there was a clear intent not to abandon the use even though it was discontinued for six months or more.

SECONDED: **Beikman**

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA156-125(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for variances to the rear yard setback regulations and off-street parking regulations at 6615 Avalon Avenue. This property is more fully described as part of Lot 1, Block K/2796, and is zoned CD 2, which requires a rear yard setback of 6 feet, and requires a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley and requires. The applicant proposes to construct and maintain a structure and provide a 0 foot rear yard setback, which will require a 6 foot variance to the rear yard setback regulations, and to locate and maintain parking spaces in an enclosed structure with a setback of 9 feet, which will require a variance of 11 feet to the off-street parking regulations.

LOCATION: 6615 Avalon Avenue

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUESTS:

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

1. A variance to the rear yard setback regulations of up to 6’ is made to complete and maintain a two-story detached accessory structure (two-car garage/game room) to replace a recently demolished one-story detached garage structure in the same location/building footprint, located as close as on the site’s rear property line or as much as 6’ into the 6’ rear yard setback.
2. A variance to the off-street parking regulations of 11’ is made to locate and maintain parking spaces in an enclosed structure (the aforementioned replacement accessory structure) 9’ from the alley right-of-way line or 11’ into the required 20’ distance that parking spaces are required to be from this alley right-of-way line if in an enclosed structure.

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 (rear yard variance):

Denial

Rationale:

- Staff concluded that the variance to the rear yard setback regulations should be denied because the applicant had not substantiated at the time of the November 29th staff review team meeting how the physical features of the flat, somewhat irregularly shaped, approximately 9,200 square foot site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 2 zoning classification while simultaneously complying with code provisions including rear yard setback regulations.

STAFF RECOMMENDATION (off-street parking variance):

Denial

Rationale:

- While the Sustainable Development and Construction Department Project Engineer has no objections to the request if the Board imposes the submitted site plan and that no vehicles be allowed to park in the driveway were imposed as conditions, staff concluded that the variance to the off-street parking regulations should be denied because the applicant had not substantiated at the time of the November 29th staff review team meeting how the physical features of the flat, somewhat irregularly shaped, approximately 9,200 square foot site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 2 zoning classification while simultaneously complying with code provisions including off-street parking regulations

BACKGROUND INFORMATION:

Zoning:

Site: CD 2 (Tract III) (Conservation District)
North: CD 2 (Tract III) (Conservation District)
South: CD 2 (Tract III) (Conservation District)
East: CD 2 (Tract III) (Conservation District)
West: CD 2 (Tract III) (Conservation District)

Land Use:

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

Zoning/BDA History:

1. BDA067-060, Property located at 6625 Avalon Avenue (the property east of the subject site)

On April 16, 2007, the Board of Adjustment Panel C granted a request for a variance to the off-street parking regulations of up to 17' and imposed the following conditions: 1) compliance with the submitted site plan is required. 2) An automatic garage door must be installed and maintained in working order at all times. 3) At no time may the area in front of the garage be utilized for the parking of vehicles. 4) All applicable permits must be obtained.

The case report stated that the request was made to construct and maintain a detached accessory structure whereby enclosed parking spaces in the structure would be located less than the required 20' from the alley right-of-way line. (The site was developed with a detached garage/quarters structure that the applicant intended to replace with a new detached accessory garage structure).

GENERAL FACTS/STAFF ANALYSIS (rear yard variance):

- This request for a variance to the rear yard setback regulations of up to 6' focuses on completing and maintaining a two-story detached accessory structure (two-car garage/game room) with an approximately 700 square foot building footprint that would replace a recently demolished one-story detached garage structure in the same location/building footprint, located as close as on the site's rear property line or as much as 6' into the 6' rear yard setback on a site developed with a two-story single family home structure.
- The site is zoned CD 2 (Tract III) which requires that all building sites provide a minimum rear yard setback of 6'.
- The submitted site plan represents a detached accessory structure with an approximately 700 square foot building footprint that is located 7 inches from the rear property line or as much as 6' into the required 6' rear yard setback.
- The application has stated that the "previous detached 1-story garage was removed and rebuilt in the same location and footprint".

- According to DCAD records, the “main improvement” for the property addressed at 6615 Avalon Drive is a structure constructed in 1924 with 3,442 square feet of living area/total area with the following “additional improvements”: 1) a 552 square foot detached garage; 2) 178 square feet of unfinished space; and 3) 552 square feet of unfinished space. Because records show that the structures on this site were built in the 20’s, it is assumed that the accessory structure recently demolished on the site was a nonconforming structure.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner’s agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The applicant is required to make a request for a variance to the rear yard setback regulations for the replacement accessory structure in (according to the applicant) the same location and with the same footprint because he intentionally destroyed what is assumed to be a nonconforming structure and he is causing it to become more nonconforming to the rear yard setback regulations because he proposes to add a second floor to align with the first floor.
- The subject site is flat, irregular in shape, and according to the submitted application is 0.21 acres (or approximately 9,200 square feet) in area. The site is zoned CD 2 where lots prior to its creation in 1988 were zoned R-10(A) where lots are typically 10,000 square feet in area.
- According to calculations taken from the site plan, about 45 square feet (or approximately 6 percent) of the replacement 700 square foot accessory structure building footprint is to be located in the site’s 6’ rear yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the rear yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 2 zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 2 zoning classification.

- If the Board were to grant the request for a variance to the rear yard setback regulations of up to 6', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the rear yard setback would be limited to that what is shown on this plan – which in this case is an accessory structure located as close as on the rear property line or as much as 6' in the 6' rear yard setback.

GENERAL FACTS/STAFF ANALYSIS (off-street parking variance):

- The request for a variance to the off-street parking regulations of 11' focuses on locating and maintaining parking spaces in an enclosed two-story detached accessory structure (two-car garage/game room) which replaces a recently demolished one-story detached garage structure in the same location/building footprint 9' from the alley right-of-way line or 11' into the required 20' distance that parking spaces in an enclosed structure is required to be from this alley right-of-way line on a site developed with a two-story single family home structure.
- The site is zoned CD 2 which provides no specific provisions related to the location of enclosed parking spaces. As a result, off-street parking provisions of the Dallas Development Code apply on this property.
- The Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The submitted site plan represents that the location of enclosed parking spaces in the detached accessory structure is 9' 1" from the alley right-of-way line or approximately 10' from the alley pavement line.
- The application has stated that the "previous detached 1-story garage was removed and rebuilt in the same location and footprint".
- According to DCAD records, the "main improvement" for the property addressed at 6615 Avalon Drive is a structure constructed in 1924 with 3,442 square feet of living area/total area with the following "additional improvements": 1) a 552 square foot detached garage; 2) 178 square feet of unfinished space; and 3) 552 square feet of unfinished space. Because records show that the structures on this site were built in the 20's, it is assumed that the accessory structure recently demolished on the site was a nonconforming structure.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The applicant is required to make a request for a variance to the off-street parking regulations for the replacement accessory structure in (according to the applicant) the same location and with the same footprint because he intentionally destroyed what is assumed to be a nonconforming structure.

- The subject site is flat, irregular in shape, and according to the submitted application is 0.21 acres (or approximately 9,200 square feet) in area. The site is zoned CD 2 where lots prior to its creation in 1988 was zoned R-10(A) where lots are typically 10,000 square feet in area.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request marked "Has no objections if certain conditions are met" commenting "Subject to the site plan, and that no vehicles at any time be allowed to park in the driveway. The alley right-of-way shall remain unobstructed at all times".
- 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 CD 2 zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 2 zoning classification.
- If the Board were to grant the variance request, staff recommends imposing the following conditions:
 1. Compliance with the submitted site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the area in front of the garage be utilized for parking of vehicles. (These conditions are imposed to help assure that the variance will not be contrary to the public interest).

Timeline:

- October 21, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 8, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 8, 2016: 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd 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.

November 29, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: 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, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

November 30, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” commenting “Subject to the site plan, and that no vehicles at any time be allowed to park in the driveway. The alley right-of-way shall remain unobstructed at all times”.

December 2, 2016: The applicant submitted additional information to staff 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 November 29th staff review team meeting.

BOARD OF ADJUSTMENT ACTION: DECEMBER 12, 2016

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm St., #B, Dallas, TX
 Lauren Cavenaghi, 6615 Avalon Ave, Dallas, TX
 Gonzalo Cavenaghi, 6615 Avalon Ave, Dallas, TX

APPEARING IN OPPOSITION: William Angelley, 6608 Lakewood Blvd, Dallas, TX

MOTION: Foster

I move that the Board of Adjustment, in request No. **BDA 156-125**, hold this matter under advisement until **February 23, 2017**.

SECONDED: Gambow

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA156-127(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert L. Buckman, Jr. for special exceptions to the fence standards at 9328 Redondo Drive. This property is more fully described as Lot 15, Block F/5314, and is zoned R-10(A), NSO 5, which limits the height of a fence to 4 feet. The applicant proposes to construct and maintain 8 foot high fences, which will require 4 foot special exceptions to the fence standards.

LOCATION: 9328 Redondo Drive

APPLICANT: Robert L. Buckman, Jr.

REQUESTS:

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

1. A special exception to the fence standards related to fence height of 4’ is made to maintain a fence higher than 4’ in height (an approximately 5’ 8” high pedestrian gate with 6’ high masonry columns, and an 8’ high solid board-on-board fence) in the site’s 50’ required front yard on Redondo Drive.
2. A special exception to the fence standards related to fence height of 4’ is made to construct and maintain a fence higher than 4’ in height (an 8’ high solid board-on-board fence) in the site’s 50’ required front yard on Bella Vista Drive.

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-10(A) (NSO 5) (Single family district 10,000 sq ft, Neighborhood Stabilization Overlay)
- North:** R-10(A) (NSO 5) (Single family district 10,000 sq ft, Neighborhood Stabilization Overlay)
- South:** R-10(A) (NSO 5) (Single family district 10,000 sq ft, Neighborhood Stabilization Overlay)
- East:** R-10(A) (NSO 5) (Single family district 10,000 sq ft, Neighborhood Stabilization Overlay)
- West:** R-10(A) (NSO 5) (Single family district 10,000 sq ft, Neighborhood Stabilization Overlay)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- These requests for special exceptions to the fence standards related to fence height of 4' focus on the following;
 1. maintaining an approximately 5' 8" high pedestrian gate with 6' high masonry columns, and an 8' high solid board-on-board fence in the site's 50' required front yard on Redondo Drive; and
 2. constructing and maintaining an 8' high solid board-on-board fence in the site's 50' required front yard on Bella Vista Drive.
- The subject site is zoned R-10(A) (NSO 5) (Single family district 10,000 square feet Neighborhood Stabilization Overlay) which requires a minimum front yard setback of 50'.
- 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 at the intersection of Redondo Drive and Bella Vista Drive. The site has two 50' front yard setbacks in order to maintain continuity of the established front yard setbacks along both of these street frontages where homes/lots to the west "front" on Redondo Drive and Bella Vista Drive.
- The applicant has submitted a site plan and partial elevations of the proposal with notations indicating that the proposal reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan:
 - Along Redondo Drive: The proposal over 4' in height in the front yard setback is represented as being approximately 25' in length parallel to the street, and approximately 27' – 32' in length perpendicular to the street on the north and south sides of the site in the front yard setback.
 - Along Redondo Drive: The fence proposal is represented as being located approximately 10' – 13' from the property line or approximately 23' – 26' from the pavement line.
 - Along Bella Vista Drive: The proposal over 4' in height in the front yard setback is represented as being approximately 115' in length parallel to the street, and approximately 26' in length perpendicular to the street on the north side of the site in the front yard setback.
 - Along Bella Vista Drive: The fence proposal is represented as being located approximately 14' – 23' from the property line or approximately 25' – 34' from the pavement line.

- Along Bella Vista Drive: A row of “29 existing crepe myrtles to remain” located directing inside the property line – a row that is located in front of what appears to be more than half of the proposed fence on this street.
- Along Redondo Drive: Two single family lots with no fence front the existing fence.
- Along Bella Vista Drive: Two single family lots with no fence front the proposed fence.
- 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 December 2, 2016, a petition with 36 signatures had been submitted in support of the request and 2 letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to fence height of 4’ will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and partial elevations would require the proposal exceeding 4’ in height in the front yard setbacks to be constructed/maintained in the locations and of the heights and materials as shown on these documents.

Timeline:

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

November 8, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 8, 2016: 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis; and the December 2nd 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.

November 29, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: 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, 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.

November 30, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: DECEMBER 12, 2016

APPEARING IN FAVOR: Robert Buckman, Jr., 9328 Redondo Dr, Dallas, TX

APPEARING IN OPPOSITION: Mark Hoisterey, 1409 Bella Vista, Dallas, TX
Michael Holter, 1557 El Campo Dr., Dallas, TX

MOTION #1: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 156-127**, on application of Robert L. Buckman, Jr., **grant** the request to construct and maintain an 8-foot-high fence in the property's front yard along Redondo Drive only as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and partial elevations is required.

SECONDED: Foster

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 5 – 0

MOTION #2: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 156-127**, on application of Robert L. Buckman, Jr., **deny** the special exception along Bella Vista Drive requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Winslow

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0 -

MOTION PASSED: 5 – 0

MOTION: Richardson

I move to adjourn this meeting.

SECONDED: Beikman

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

P. M. - Board Meeting adjourned for December 12, 2016

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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

MOTION: Richardson

I move to adjourn this meeting.

SECONDED: Beikman

AYES: 5 – Richardson, Beikman, Winslow, Foster, Gambow

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

5:33 P. M. - Board Meeting adjourned for **December 12, 2016**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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