

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
TUESDAY, FEBRURY 21, 2017**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, vice-chair, Michael Gibson, regular member, Elizabeth Nelson, regular member, Renee Dutia, regular and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Casey Burgess, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Engineering Asst. Director, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Peter Schulte, vice-chair, Michael Gibson, regular member, Elizabeth Nelson, regular member, Renee Dutia, regular member and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Casey Burgess, Asst. City Atty, Todd Duerksen, Development Code Specialist, Lloyd Denman, Engineering Asst. Director, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 21, 2017** docket.

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.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel January 17, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

MOTION: None

The minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA167-014(SL)

REQUEST: To reimburse the filing fee submitted in conjunction with a request to appeal the decision of an administrative official.

LOCATION: 4217 Swiss Avenue

APPLICANT: Jim Anderson/Peak's Addition HOA

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:

November 28, 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.

January 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 6, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 1st 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 February 10th 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."

February 2, 2017: The applicant emailed the Board Administrator requesting a waiver of the filing fee regarding this application (see Attachment A).

February 2, 2017: The Board Administrator forwarded the code provision as it relates to fee waivers/reimbursements (Sec 51A-1.105(b)(6)) to the applicant, and informed him that typically when this type of request is made, the applicant will submit 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 resent the applicant that the deadline to submit information to be included in the Board's docket, and the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence".

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Jim Anderson, 4706 Swiss Ave, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment **deny** the request to reimburse the filing fee submitted in conjunction with a request to appeal the decision of an administrative official.

SECONDED: **Gibson**

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-109(JM)

BUILDING OFFICIAL'S REPORT: Application of Aaron W. Grieb, represented by John Vecchio of Greenberg Farrow, for a variance to the front yard setback regulations at 13729 N. Central Expressway. This property is more fully described as Lot 1.1, Block B/7763, and is zoned MU-3, which requires a front yard setback of 15 feet. The applicant proposes to construct and/or maintain a structure and provide a 3 foot front yard setback, which will require a 12 foot variance to the front yard setback regulations.

LOCATION: 13729 N. Central Expressway

APPLICANT: Aaron W. Grieb
Represented by John Vecchio of Greenberg Farrow

REQUEST:

A request for a variance to the front yard setback regulations of 12' is made to construct and/or maintain structures for a general merchandise or food store 3,500 square feet or less and motor vehicle fueling station use, part of which would be located 3' from the site's front property line or 12' into the 15' front yard setback along Midpark Road.

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 at the time of the February 7th staff review team meeting how the features of the flat, rectangular-shaped, and approximately 23,394

square foot lot precluded him from developing it in a manner commensurate with other developments found on similarly-zoned MU-3 Mixed Use District. There do not seem to be any restrictions hindering the applicant from developing/maintaining the lot with a commensurately-sized structure/use that can comply with setbacks.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	MU-3 Mixed Use District
<u>North:</u>	MU-3 Mixed Use District; SUP No. 1818
<u>East:</u>	IR Industrial Research District
<u>South:</u>	IR Industrial Research District
<u>West:</u>	MU-3 Mixed Use District

Land Use:

The subject site is currently a motor vehicle fueling station. To the immediate north is a general merchandise or food store 100,000 square feet or more use. North Central Expressway lies to the east and south with an office use across the expressway. A restaurant without drive-in or drive-through service exists to the west.

Zoning/BDA History:

1. BDA156-108, Property located at 13729 N. Central Expressway (the subject site)
On November 15, 2016, the Board of Adjustment Panel A granted 1) a special exception to the landscape regulations to construct and maintain a structure and provide an alternate landscape plan; and, 2) a special exception to the off-street parking regulations for 2 spaces.
The case report stated that the request was made in conjunction with constructing and maintaining a 1,200 square foot building for a general merchandise or food store 3,500 square feet or less and a motor vehicle fueling station.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on allowing associated structures for a proposed general merchandise or food store 3,500 square feet or less and motor vehicle fueling station use to encroach up to 12' into the 15' front yard setback along Midpark Road. The subject site has two front yards and is required to provide 15' of unobstructed space from the front property line along both North Central Expressway, and Midpark Road.
- The request is to construct and maintain a 1,200 square foot structure for a proposed general merchandise or food store 3,500 square feet or less and motor

vehicle fueling station uses on a site that is developed with a motor vehicle fueling station use. Associated structures including a dumpster and enclosure, and a light post are proposed to be located 3' and 4' from the front property line along Midpark Road, respectively or 12' (dumpster and enclosure) and 11' (light post) into the site's 15' front property line along Midpark Road. No encroachments are proposed within the North Central Expressway front yard.

- The subject site is located at the northeast intersection of Midpark Road and North Central Expressway.
- Lots zoned an MU-3 Mixed Use District are required to provide a minimum front yard setback of 15'.
- The subject property is currently in compliance.
- A site plan has been submitted identifying the total proposed square footage of the main building to be 1,200. The applicant has indicated that they are unable to provide for the two structures in question while accounting for other elements of the site design including safe vehicular traffic, loading/unloading of dumpsters and fuel tankers, and desired signage.
- According to calculations taken by the Board Senior Planner from the submitted site plan, the addition of a dumpster, enclosure, and light post within the Midpark Road front yard setback accounts for about 12 percent of the total square footage of the required front yard along Midpark Road, or 200 square feet.
- 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-7.5(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-7.5(A) zoning classification.
- If the board were to grant the variance request, and impose the submitted site plan as a condition, the structures 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 3' from the site's front property line along Midpark Road (or 12' into the 15' front yard setback).

TIMELINE:

August 25, 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.

October 10, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

October 14, 2016: The Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the October 26th deadline to submit additional evidence for staff to factor into their analysis; and the November 4th 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 1, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November 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.

November 21, 2016: The Board of Adjustment Panel A voted unanimously to hold this case to February 21, 2017.

February 1, 2017: The applicant submitted new evidence, provided in "Attachment A."

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

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Bassam Ziada, 3100 N. Verona Lane, Fayetteville, AR

APPEARING IN OPPOSITION: No one

MOTION: Sibley

I move that the Board of Adjustment, in Appeal No. **BDA 156-109**, on application of Aaron W. Grieb, represented by John Vecchio,, **deny** the variance to the front yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Dutia

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-013(SL)

BUILDING OFFICIAL’S REPORT: Application of Nathaniel Mangum for special exceptions to the fence standards and visual obstruction regulations at 5314 Yolanda Lane. This property is more fully described as Lot 7, Block E/5518, and is zoned R-1ac(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 maintain a 7 foot 2 inch high fence in a required front yard, which will require a 3 foot 2 inch special exception to the fence standards, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5314 Yolanda Lane

APPLICANT: Nathaniel Mangum

REQUESTS:

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

1. A request for a special exception to the fence standards of up to 3’ 2” is made to maintain a fence (a 5’ 7” high open metal picket fence with 5’ 7” high posts, and two arched open metal picket gates ranging in height from 5’ 7” to 7’ 2”) higher than 4’ in height in the site’s required front yard.
2. Requests for special exceptions to the visual obstruction regulations are made to maintain portions of the aforementioned open metal picket fence in four 20’ visibility triangles at the two driveways into the site.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (fence standards):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Denial

Rationale:

- Staff concurred with the Sustainable Development Department Assistant Director Engineering who recommends that these requests be denied.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be denied because the applicant had not substantiated how the existing 5' 7" high open metal picket fence with 5' 7" high posts in four 20' visibility triangles at the two driveways into the site from the street do not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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 standards):

- This request for a special exception to the fence standards focuses on maintaining a 5' 7" high open metal picket fence with 5' 7" high posts, and two arched open metal picket gates ranging in height from 5' 7" to 7' 2" on a site developed with a single family home.
- The subject site is zoned R-1ac(A). While R-1ac(A) zoning requires a 40' front yard setback, the subject site has a 65' required front yard because of a platted building line.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and an elevation of the proposal/existing fence in the front yard setback with notations indicating that the proposal reaches a maximum height of 7' 2".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 200' in length parallel to the street and approximately 65' perpendicular to the street on the east and west sides of the site in the required front yard.
 - The fence proposal is represented as being located approximately on the front property line or approximately 15' from the pavement line.
- One single family lot fronts the existing fence, a lot that has no fence in the front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area approximately 300 feet east and west of the site and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of February 10, 2017 no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence standards of 3' 2" will not adversely affect neighboring property.
- Granting this special exception of 3' 2" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal/existing fence exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

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

- The requests for special exceptions to the visual obstruction regulations focus on maintaining portions of a 5' 7" high open metal picket fence with 5' 7" high posts in four 20' visibility triangles at the two driveways into the site.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
- between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant submitted a site plan and an elevation representing a 5' 7" high open metal picket fence in the four, 20' visibility triangles at the two driveways into the site.
- The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet along with a photo (see Attachment A). The review comment sheet was marked "Recommends that this be denied" with the following additional comment: "The fence and gate create a public traffic hazard".
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain portions of a 5' 7" high open metal picket fence located in four 20' visibility triangles at the two driveways into the site do not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the submitted site plan and elevation 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.

Timeline:

November 22, 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.

January 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 6, 2017: The Board Administrator emailed the applicant the following information:

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

February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the

Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

February 10, 2017: The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet along with a photo (see Attachment A). The review comment sheet was marked "Recommends that this be denied" with the following additional comment: "The fence and gate create a public traffic hazard".

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Nathaniel Mangum, 5314 Yolanda Lane, Dallas, TX
Lindsay Mangum, 5314 Yolanda Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Nelson

I move that the Board of Adjustment in Appeal No. **BDA 167-013** hold this matter under advisement until **March 21, 2017**.

SECONDED: Sibley

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-014(SL)

BUILDING OFFICIAL'S REPORT: Application of Jim Anderson/Peak's Addition HOA to appeal the decision of an administrative official at 4217 Swiss Avenue. This property is more fully described as Lot 1B, Block 10/740, and is zoned PD-298 (Subarea 10). The applicant proposes to appeal the decision of an administrative official in the issuance of a building permit.

LOCATION: 4217 Swiss Avenue

APPLICANT: Jim Anderson/Peak's Addition HOA

February 21, 2017 Public Hearing Notes:

- The applicant submitted additional written documentation to the Board at the public hearing.

REQUEST:

The submitted application states “appeal decision of an administrative official in the issuance of a building permit” and “issuance of building permit was made in error by city official in that permits were granted which do not conform with residential proximity slope as established in PD 298 and Dallas Development Code”.

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: PD 298 (Subarea 10) Tract 2, Planned Development District
North: PD 298 (Subareas 9 & 10) Planned Development District
South: PD 298 (Subarea 10) Tract 2, Planned Development District
East: PD 298 (Subareas 9 & 10) Planned Development District
West: PD 298 (Subareas 9 & 10) Planned Development District

Land Use:

The subject site is undeveloped. The areas to the north, south, east and west are developed with mix of uses.

Zoning/BDA History:

- | | |
|---|---|
| 1. Miscellaneous Item 2, BDA167-014, Property at 4802 4217 Swiss Avenue (the subject site) | On February 21, 2017, the Board of Adjustment Panel A will consider reimbursing the filing fee made in conjunction with this application. |
|---|---|

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.

- The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment E). This information included Building Permit No.1512041028 – the permit the applicant identified for the appeal of the Director of Sustainable Development and Construction decision pertaining to 4217 Swiss Avenue.

Timeline:

November 28, 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.

January 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 6, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 1st 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 February 10th 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.”

January 30, 2017: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded 20 building permits that had been issued for the development (see Attachment A).

February 1, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

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

Staff determined at this meeting that one permit needed to be identified as the record upon which the appeal is based.

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

February 10, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment C).

February 10, 2017: The Assistant City Attorney assisting the Building Official submitted additional information to staff beyond what was submitted with the original application (see Attachment D).

February 10, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment E). This information included Building Permit No.1512041028 – the permit the applicant identified for the appeal of the Director of Sustainable Development and Construction decision pertaining to 4217 Swiss Avenue.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Wendy Millsap, 4530 Reiger Ave., Dallas, TX
Jim Andeson, 4706 Swiss, Dallas, TX
Larry Offett, 6038 Bryan Pkwy, Dallas, TX
Jesse Moleno, 132 N. Peak St., Dallas, TX
Evelyn Montgomery, 4603 Swiss, Dallas, TX
Philip Canady, 4301 Sycamore St., Dallas, TX

APPEARING IN OPPOSITION: William Cothrum, 900 Jackson St., Ste 640, Dallas, TX

APPEARING FOR THE CITY: Sonia Ahmed, 1500 Marilla, 7DN, Dallas, TX
Duante Rushton, 320 E. Jefferson, Dallas, TX

MOTION #1: Schulte

I move that the Board of Adjustment suspend its rules and accept the evidence that is being presented today.

SECONDED: Gibson

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Schulte

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 167-014**, on application of Jim Anderson/Peak's Addition HOA, and having evaluated the evidence pertaining to the property and heard all testimony and facts

supporting the application, I move that the Board of Adjustment **affirm** the decision of the building official and **deny** the relief requested by the applicant **without prejudice**.

SECONDED: Gibson

AYES: 4 – Schulte, Gibson, Dutia, Sibley

NAYS: 1 - Nelson

MOTION PASSED: 4 – 1

FILE NUMBER: BDA167-020(SL)

BUILDING OFFICIAL'S REPORT: Application of Robert Reeves, represented by Robert Reeves and Associates, Inc., for a special exception to the landscape regulations at 100 Crescent Court. This property is more fully described as Lot 1A, Block 2/948, and is zoned PD-193 (HC), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 100 Crescent Court

APPLICANT: Robert Reeves
Represented by Robert Reeves and Associates, Inc.

REQUEST:

A special exception to the landscape regulations was originally made to amend certain features shown on an alternate landscape plan (including but not limited to constructing and maintaining an approximately 450 square foot outside pavilion to a restaurant use within the mixed use development) that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on August 16, 2016: BDA156-076 on the site currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent).

However, on February 9th, the applicant submitted a letter to staff (see Attachment B) requesting a delay of this request until the Board of Adjustment Panel A March 21st public hearing to allow additional time to create a revised alternate landscape plan that would represent a new patio for a restaurant use which may have an impact on trees proposed and conveyed on the revised alternate landscape plan that was submitted on February 1st.

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:

Denial

Rationale:

- The applicant had not established at the time of the February 7th staff review team meeting how the special exception will not compromise the spirit and intent of the PD 193 landscape requirements.

BACKGROUND INFORMATION:

Site: PD 193(HC) (Planned Development, Heavy Commercial)
North: PD 193(HC) (Planned Development, Heavy Commercial)
South: PD 193 (PDS 334) (Planned Development, Planned Development)
East: PD 193(PDS 64) (Planned Development, Planned Development)
West: PD 193(PDS 74) (Planned Development, Planned Development)

Land Use:

The subject site is developed with a mixed use development (The Crescent). The areas to the north, east, south, and west are developed with a mix of land uses.

Zoning/BDA History:

1. BDA156-076, Property at 100, Crescent Court (the subject site)

On August 16, 2016, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the following conditions: 1) compliance with the submitted alternate landscape plan is required; and 2) All landscape improvements in each landscape area on the property as shown on the submitted revised landscape plan must be completed within 18 months of Board action, and landscape improvements for areas B and D as shown on the submitted landscape plan must be completed before the final building inspections of each permit in areas B and D, respectively.

The case report stated the request was made to amend certain features shown on an alternate landscape plan that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the

subject by Board of Adjustment Panel A on March 17, 2015: BDA145-037. The subject site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent). Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on November 15, 2016).

2. BDA145-037, Property at 100, Crescent Court (the subject site)

On March 17, 2015, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition.

The case report stated the request was made to replace an existing drive-through bank facility with an approximately 3,000 square foot restaurant, and not fully providing required landscaping on a site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent) (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on June 28, 2016).

3. BDA 134-042, Property at 100, Crescent Court (the subject site)

On June 24, 2014, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition.

The case report stated the request was made to construct and maintain an approximately 1,400 square foot addition to an approximately 1,450,000 square foot mixed use development (The Crescent), and not fully providing required landscaping. (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on January 20, 2015).

4. BDA 81-239A, Property at 100, 200, 300, 400, and 500 Crescent Court (the subject site)

On February 14, 1988, the Board of Adjustment granted a request for "a 599 parking space variance and eliminate the set-aside land provisions subject to a TMP program as per the memo from Ken Melston, Manager of Transportation Engineering Services.

5. BDA 81-239, 239, Property at 2304 Cedar Springs Road (the subject site)

On October 13, 1981, the Board of Adjustment granted a 599 parking space variance, subject to a parking study to be conducted approximately one year after initial completion of the project

GENERAL FACTS/ STAFF ANALYSIS:

- This request originally focused on amending certain features shown on an alternate landscape plan (including but not limited to constructing and maintaining an approximately 450 square foot outside pavilion to a restaurant use within the mixed use development) that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on August 16, 2016: BDA156-076 on the site currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent).
- However, on February 9th, the applicant submitted a letter to staff (see Attachment B) requesting a delay of this request until the Board of Adjustment Panel A March 21st public hearing to allow additional time to create a revised alternate landscape plan that would represent a new patio for a restaurant use which may have an impact on trees proposed and conveyed on the revised alternate landscape plan that was submitted on February 1st.
- 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 with regard to this application (see Attachment C). This memo stated the following:
 - The Chief Arborist supports the proposed revisions to the alternate landscape plan for 100 Crescent Court which was submitted for the February hearing. The revisions sustain a plan which does not violate the spirit and intent of the ordinance.
 - However, based on the applicant's statement of February 9, there may yet be additional revisions to the alternate landscape plan based on proposed future additions on a building site which is undergoing a period of general modification. Any additional revisions to the landscape plan should be completed before permits are submitted for the future addition. The ordinance requires that any change to floor area, and net increase of impervious surfaces, will require future landscape compliance under this ordinance. The applicant has successfully attempted to report all new adjustments or errors to be updated on the revised alternate landscape plans to date. The arborist office only requests the most efficient means to have a complete landscape plan for the purpose of permitting.

The Chief Arborist will support the applicant, staff, and the board to help achieve the appropriate outcome.

- The applicant has the burden of proof in establishing that the special exception will not compromise the spirit and intent of Section 51P-193-126: “Landscape, streetscape, screening, and fencing standards”.
- The applicant has requested that action on this application be delayed until the Board of Adjustment Panel A March 21st public hearing to allow additional time to create a revised alternate landscape plan that would represent a new patio for a restaurant use which may have an impact on trees proposed and conveyed on the revised alternate landscape plan that was submitted on February 1st.

Timeline:

December 15, 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.

January 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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.”

January 6, 2017: The Board Administrator emailed the following information to the applicant:

- 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 February 1st deadline to submit additional evidence for staff to factor into their analysis; and the February 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 1, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

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

Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

February 9, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

February 10, 2017: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment C).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., #160, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Dutia**

I move that the Board of Adjustment in Appeal No. **BDA 167-020** hold this matter under advisement until **March 21, 2017**.

SECONDED: **Nelson**

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Sibley**

I move to adjourn this meeting.

SECONDED: **Gibson**

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

3:25 P. M.: Board Meeting adjourned for **February 21, 2017**

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.