

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, SEPTEMBER 21, 2022**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Joseph Cannon, regular member (temporary presiding officer), Thomas Fleming, alternate member, and Michael Karnowski, regular member

MEMBERS ABSENT FROM BRIEFING: Herlinda Resendiz, regular member

MEMBERS PRESENT AT HEARING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Joseph Cannon, regular member (temporary presiding officer), Thomas Fleming, alternate member, and Michael Karnowski, regular member

MEMBERS ABSENT FROM HEARING: Herlinda Resendiz, regular member

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., Brian King, Asst. City Attorney, LaTonia Jackson, Board Secretary, Charles Trammell, Consultation Manager, Phil Erwin, Chief Arborist, David Nevarez, Senior Traffic Engineer, and Jason Pool, Sign Code Specialist/meeting moderator

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., Brian King, Asst. City Attorney, LaTonia Jackson, Board Secretary, Charles Trammell, Consultation Manager, Phil Erwin, Chief Arborist, David Nevarez, Senior Traffic Engineer, and Jason Pool, Sign Code Specialist/meeting moderator

11:09 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 21, 2022 docket.**

BOARD OF ADJUSTMENT ACTION: September 21, 2022

1:02 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 B, August 17, 2022 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: September 21, 2022

MOTION: Karnowski

Approval of the Board of Adjustment Panel B, August 17, 2022 public hearing minutes.

SECONDED: Fleming

AYES: 5 – Shouse, Karnowski, Gambow, Fleming, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

FILE NUMBER: BDA212-080(JM)

BUILDING OFFICIAL'S REPORT: Application of Wade Johns represented by Angela Hunt, Munsch Hardt Kopf & Harr, for a special exception to the landscape regulations at 3004 and 3012 Fairmount Street. This property is more fully described as Lot 18A, Block 11/946 and is zoned Planned Development Subdistrict No. 167 within Planned Development District No. 193, the Oak Lawn Special Purpose District, which requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide an alternate landscape plan (relating to garage screening and landscaping), which will require a special exception to the landscape regulations.

LOCATION: 3004 and 3012 Fairmount Street

APPLICANT: Wade Johns

REPRESENTATIVE: Angela Hunt, Munsch Hardt Kopf & Harr

REQUESTS:

The applicant is seeking to construct a multi-story mixed use (retail and multifamily) building with structured parking. A recent rezoning of the site permitted no setback along the alleyway; however, the screening and setback requirement in the landscape regulations of PD No. 193 require an additional setback and landscaping for the structured parking which impacts the proposed off-street loading area. The applicant is seeking to provide an alternate landscape plan to remedy this issue.

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

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, 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.

In determining whether to grant a special exception, the board shall consider the following factors:

- the extent to which there is residential adjacency.
- the topography of the site.
- the extent to which landscaping exists for which no credit is given under this article.
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Staff does not provide a recommendation on special exceptions to the landscape regulations since the standard states the board may grant the variance when, *in the board's opinion*, certain conditions exist/will be met.

However, the City of Dallas chief arborist does submit a technical opinion to aid in the board's decision-making. A memo regarding the applicant's request and stating no objection was provided with details of the assessment made (**Attachment B**). Furthermore, compliance with the revised landscape plan submitted on August 25th (**Attachment A**) is recommended.

Rationale:

- The applicant has substantiated how the proposed layout and use of the area will not compromise the spirit and intent of the landscape requirements of PD No. 193.

BACKGROUND INFORMATION:

Zoning within PD No. 193:

Site: PDS No. 167
North: PDS No. 93 within PD No. 193
East: PDS No. 98
South: GR General Retail Subdistrict
West: PDS No. 131

Land Use:

The subject site is developed with two single-story office buildings; however, the site will be redeveloped with a mixed use (retail and multifamily) high-rise building with structured parking. Properties to the north and east contain midrise multifamily uses; to the south is a multilevel parking garage; to the west is a midrise office building.

Zoning/BDA History:

There has been one related zoning case at the subject site and one board case in the vicinity of the subject site within the last five years.

1. Z212-136: a zoning case associated with the subject site, which was approved by City Council on April 27, 2022, and created PDS No. 167.
2. BDA212-042: On May 18, 2022, Panel B granted a parking variance on a property east of the subject site.

GENERAL FACTS/STAFF ANALYSIS:

The property was rezoned to Planned Development Subdistrict No. 167 with a base of GR General Retail Subdistrict within Planned Development District No. 193, the Oak Lawn Special Purpose District. The PDS refers back to PD No. 193 for all items not expressed in the PDS ordinance, including landscape and screening regulations. While the PDS permitted no setback along the alleyway of the site, northwest portion of the property, these other regulations require a 10-foot setback with landscaping buffer.

The request for a special exception to the landscape regulations is to permit the construction of a multi-story mixed use (retail and multifamily) building with structured parking. While the recent rezoning of the site permitted no setback along the alleyway, the screening and setback requirement in the landscape regulations of PD No. 193 require an additional setback and landscaping for the structured parking which impacts the proposed development overall, while specifically compromising the off-street loading area on the approved development plan. The applicant is seeking to provide an alternate landscape plan to remedy this issue.

The City of Dallas chief arborist submitted a memo regarding the applicant's request (**Attachment B**).

The chief arborist's memo states the following with regard to "request":

The applicant is seeking a special exception to the landscaping requirements of PD 193 (PDS 167) to authorize landscaping conditions for an approved development plan. The request is to alleviate the unintended deficiency of the new ordinance to address the council-approved setback and conditions.

The chief arborist's memo states the following with regard to "provision":

The proposed alternative landscape plan complies with all requirements in PD 193 Part 1 with one exception. The development plan was approved by the city council in accordance with PDS 167. The landscaping requirement for garage screening was overlooked in forming the

subdistrict ordinance so the code paragraph did not stipulate a removal of this screening requirement as intended for the building design.

(D) Garage screening and landscaping.

Aboveground parking structures must have a 10-foot landscaping buffer on any side facing a public right-of-way, residential district, residential subdistrict, or residential use. This landscape buffer must contain one tree for every 25 feet of frontage and evergreen shrubs planted three feet on center. Initial plantings must be capable of obtaining a solid appearance within three years.

The chief arborist's memo states the following with regard to "deficiencies":

The proposed alternative landscape plan does not provide for the garage screening and landscaping along the adjacent alley frontage as called for in Section 51P-192.126(b)(3)(D), Garage Screening and Landscaping. All other landscaping requirements of PD 193 Part 1 are indicated on the plan.

The chief arborist's revised memo states the following with regard to the "recommendation":

The chief arborist recommends approval of the special exception because it is believed the exception does not compromise the spirit and intent of the ordinance.

As of September 9, 2022, no letters have been submitted regarding the request.

If the board were to grant this request and impose the revised submitted landscape plan as a condition to the request, the site would provide an exception from compliance with the minimum landscape requirements relating to garage screening.

Timeline:

- | | |
|------------------|--|
| June 8, 2022: | The applicant submitted an "Application/Appeal to the Board of Adjustment." |
| August 4, 2022: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B. |
| August 11, 2022: | <p>The Board of Adjustment Chief Planner emailed the applicant the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:</p> <ul style="list-style-type: none">• a copy of the application materials including the Building Official's report on the application;• 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.”

August 25, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Conservation District Chief Planner, and the Assistant City Attorney to the Board, the PUD Senior Planner, and the new Assistant City Attorney.

August 25, 2022: A revised landscape plan was submitted (**Attachment A**). The Development Services Chief Arborist provided staff with a memo (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: September 21, 2022

APPEARING IN FAVOR: Angela Hunt 3004/3012 Fairmount Dallas,TX

APPEARING IN OPPOSITION: None.

MOTION: Fleming

I move that the Board of Adjustment **grant** the following application(s) listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code, as applicable to wit:

BDA 212-080—application of Wade Johns represented by Angela Hunt for a special exception to the landscape requirements in the Dallas Development Code is granted subject to the following condition:

Compliance with the revised submitted alternate landscape plan is required.

SECONDED: Karnowski

AYES: 5 – Shouse, Karnowski, Gambow, Fleming, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

FILE NUMBER: BDA212-081(JM)

BUILDING OFFICIAL’S REPORT: Application of Nathan Hanson for a special exception to the rear setback regulations at 5923 Del Roy Drive. This property is more fully described as Lot 9, Block 8/6383 and is zoned an R-16(A) Single Family District, which requires a rear yard setback of 10 feet. The applicant proposes to enlarge a single-family residential structure and provide a

three-foot rear yard setback to preserve an existing tree, which will require a special exception to the rear yard setback regulations.

LOCATION: 5923 Del Roy Drive

APPLICANT: Nathan Hanson

REQUEST:

A request for a special exception to the minimum rear yard requirements to preserve five existing trees is made to construct and maintain a new single-family structure.

STANDARD FOR A SPECIAL EXCEPTION TO THE MINIMUM REAR YARD REQUIREMENTS TO PRESERVE AN EXISTING TREE:

Section 51(A)-4.403(d) of the Dallas Development Code specifies that the board may grant a special exception to the minimum rear yard requirements in this section to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

STAFF RECOMMENDATION:

Staff does not provide a recommendation on special exceptions to the rear yard setback regulations for tree preservation since it is based on whether the board finds that the special exception is compatible with the character of the neighborhood; will not adversely affect the value of surrounding properties; and, whether the tree is worthy of preservation.

However, the City of Dallas chief arborist does submit a technical opinion to aid in the board's decision-making. A memo regarding the applicant's request was provided with details of the assessment made (**Attachment A**). Ultimately, the chief arborist found the trees to be worthy of preservation, though not required by code to be preserved.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) Single Family District
North: R-16(A) Single Family District
South: R-16(A) Single Family District
East: R-16(A) Single Family District
West: R-16(A) Single Family District

Land Use:

The subject site and the surrounding properties are developed with single-family uses.

Zoning/BDA History: There have been no related board or zoning cases in the vicinity in the last five years

GENERAL FACTS /STAFF ANALYSIS:

This request for a special exception to the minimum rear yard requirements to preserve five existing trees on the property is made to construct and maintain a new single-family structure.

Per DCAD records, the site contains 15,265 square feet of lot area. There is an existing one-story main structure built in 1952 with 1,914 square feet of floor area and a 400-square-foot attached garage.

The property is zoned an R-16(A) Single Family District and requires a rear yard setback of 10 feet for all structures.

The submitted site plan depicts a proposed 4,906-square-foot structure with a 35-foot front yard, two 10-foot side yards, and a three-foot rear yard setback. The plan stipulates an additional front yard requirement totaling 60 feet instead of 35. The structure floor area includes two, two-car garages. The trees on the site include: two 30-caliper inch magnolia trees within the front yard setback; one 30-caliper inch magnolia tree in the adjacent to the northern side yard setback, but within buildable area—and located within the additional front yard setback imposed by the plan/deed as stated; an 18-caliper inch red oak tree within the southern side yard setback; and, a 16-caliper inch red oak tree within the back yard buildable area, adjacent to the 10-foot setback. The northern magnolia and western red oak are both within buildable areas and could be removed to allow the property owner to build within the parameters of the code; however, the applicant is seeking to preserve these trees and build around them. The canopies of each tree also impact the overall buildable area, further reducing the reaches of the proposed structure.

The assessment of the trees to be preserved for the special exception for a rear yard entails a review of five trees presented by the applicant. The City of Dallas chief arborist submitted a memo regarding this request (**Attachment A**) and stated the following:

The tree survey provided by the applicant is accurate with the exception of the size of the rear yard red oak listed as 16" diameter. However, the tree is established and can potentially grow to and exceed 16" in its current location provided that it is given suitable care.

The large magnolias shown in the proposed driveway are to be placed in a new gravel driveway.

All trees on the property are not currently subject to the Article X tree conservation regulations so long as the original building structure remains to provide the single-family use. This status would change with demolition of the structure. The owner is currently at liberty to retain or remove any of the trees on the property.

The applicant has the burden of proof in establishing the following:

- Whether the requested special exception is compatible with the character of the neighborhood.
- Whether the value of surrounding properties will be adversely affected.
- Whether the tree is worthy of preservation.

As of September 9, 2022, no letters had been submitted regarding this request.

If the board were to grant the special exception request and impose the submitted site plan as a condition, the structure in the rear yard setback would be limited to what is shown on this document.

Timeline:

July 6, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment."

August 4, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 11, 2022: The Board of Adjustment Chief Planner emailed the applicant the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application;
- 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."

August 25, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Conservation District Chief Planner, and the Assistant City Attorney to the Board, the PUD Senior Planner, and the new Assistant City Attorney.

August 25, 2022: The Development Services Chief Arborist provided staff with a memo (Attachment A).

BOARD OF ADJUSTMENT ACTION: September 21, 2022

APPEARING IN FAVOR: Nathan Hanson 5923 Del Roy Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Fleming

I move that the Board of Adjustment **grant** the following applications listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code, as applicable to wit:

BDA 212-081—Application of Nathan Hanson for a special exception for tree preservation to the rear yard setback regulations in the Dallas Development Code is granted subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Karnowski

AYES: 5 – Shouse, Karnowski, Gambow, Fleming, Cannon

NAYS: 0-

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-077(PD)

BUILDING OFFICIAL'S REPORT: Application of Terri Hodge for a special exception to the fence height regulations at 11211 Strait Lane. This property is more fully described as Lot 3 in City Block 1/6391 and is zoned an R-1/2ac(A) Single Family District within Tract No. 1 of NSO No. 1, the Northaven Estates Neighborhood Stabilization Overlay, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct a seven-foot-tall fence in a required front yard, which will require a three-foot special exception to the fence regulations.

LOCATION: 11211 Strait Lane

APPLICANT: Terri Hodge

REQUEST:

The applicant proposes to construct a seven-foot-tall iron fence with two iron vehicular sliding gates located along Strait Lane. The site is developed with a one-story single-family dwelling unit.

UPDATE:

On August 17th, Panel B held this case to September 21st at the request of the applicant due to newly discovered opposition to the case. No changes have been presented.

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-1/2ac(A) (Single Family District) and NSO 1 Tract 1
Northwest: R-1/2ac(A) (Single Family District) and NSO 1 Tract 1
East: R-1/2ac(A) (Single Family District) and NSO 1 Tract 1
South: R-1/2ac(A) (Single Family District) and NSO 1 Tract 1
West: R-1/2ac(A) (Single Family District) and NSO 1 Tract 1

Land Use:

The subject site is constructed with a single family use. Surrounding properties to the east, south, and west are developed with single-family uses while the property to the north is undeveloped.

Zoning/BDA History:

There has been one related board case in the vicinity within the last five years.

1. **BDA212-052:** On July 19, 2022, the Panel A, Board of Adjustment heard and held under advisement until August 16, 2022, a request for special exceptions to the fence standards and the visibility obstruction regulations to construct and maintain an eight-foot-six-inch-tall fence located within two visibility obstruction triangles at 4630 Northaven Road.

GENERAL FACTS/STAFF ANALYSIS:

The subject site is zoned an R-1/2ac(A) Single Family District and NSO 1 Tract 1 and requires a minimum front yard setback of 40 feet. The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.

The request for a special exception to the fence height regulations is proposed to construct and maintain a seven-foot-high fence in a designated front yard setback along Strait Lane.

According to the elevation plan, the applicant proposes a seven-foot-tall black iron fence with two black iron vehicular gates at the drive approaches with a maximum length of 351.76 feet and spans the entire length of the property.

Per Dallas County Appraisal District records, the property is developed with a one-story single-family dwelling unit constructed in 1953. The single-family dwelling unit consists of approximately 3,425 square feet of floor area with a circular driveway.

The following information is shown on the submitted site plan:

- The proposed fence is approximately 351.76 feet-in-length parallel to Strait Lane and half a foot from the property line with the two vehicular gates proposed to be setback 14.5 feet and outside of the 20-foot visibility triangles.

As of September 9, 2022, no letters have been submitted in support of the request and three letters have been submitted in opposition to the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of seven feet located on Strait Lane will not adversely affect neighboring properties.

Granting the special exception to the fence standards relating to height would require the proposal exceeding four feet-in-height in the front yard setback located along Strait Lane to be maintained in the locations and heights as shown on the site plan and elevation plan.

Timeline:

- May 13, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.
- July 11, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 11, 2022: The Board Senior Planner emailed the representative 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and

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

July 28, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Board Senior Planner, the Development Services Chief Arborist, the Development Services Conservation District Senior Plans Examiner, and Development Services Chief Planner. No review sheets were submitted for this request.

August 5, 2022: The representative submitted documentary evidence (**Attachment A**) for Board consideration.

August 17, 2022: Panel B held this case to September 21st at the applicant’s request.

August 18, 2022: The board secretary delivered action letters with information on how to proceed and any future deadlines to all applicants.

August 29, 2022: The board administrator advised the applicant of the deadline information for the September hearing.

DRAFT MINUTES

BOARD OF ADJUSTMENT ACTION: August 17, 2022

APPEARING IN FAVOR: Terri Hodge 7106 Abrams Rd. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Karnowski

I move that the Board of Adjustment in Appeal No. BDA 212-077 hold this matter under advisement until September 21, 2022.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Gambow, Resendiz, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: September 21, 2022

APPEARING IN FAVOR: Terri Hodge 7106 Abrams Rd. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: **Gambow**

I move that the Board of Adjustment, in Appeal No. BDA 212-077, on application of Terri Hodge, **deny** the special exception requested by this applicant to construct and/or maintain a seven-foot-high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Fleming

AYES: 5 – Shouse, Karnowski, Gambow, Fleming, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

FILE NUMBER: BDA212-085(JM)

BUILDING OFFICIAL'S REPORT: Application of Stan Copeland of Lovers Lane United Methodist represented by David Martin of Winstead PC to terminate deed restrictions at 5324 W. Northwest Highway. This property is more fully described as Part of Lot 4, Block 6/5579, and is zoned an R-1ac(A) Single Family District, which required the imposed deed restrictions to be terminated by the board of adjustment. The applicant proposes request to terminate deed restrictions as directed in previous Board of Adjustment case number 87-141.

LOCATION: 5324 W. Northwest Highway

APPLICANT: Stan Copeland, Lovers Lane United Methodist with authorization provided by the Inwood-Northwest Homeowners Association, Inc.

REPRESENTATIVE: David Martin, Winstead PC

REQUESTS:

The applicant is seeking to terminate existing deed restrictions which were imposed on the property in 1987 and require board action for amendment/termination.

STANDARD FOR TERMINATING THE DEED RESTRICTIONS:

None.

STAFF RECOMMENDATION:

No staff recommendation is made on this type of request. There is no basis for how the board should weigh this decision; however, the board is the sole entity empowered to amend/terminate the deed restrictions in place.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) Single Family District

North: PD No. 815

East: R-1ac(A) Single Family District with SUP No. 580
South: R-16(A) Single Family District
West: R-1ac(A) Single Family District

Land Use:

The subject site is developed with an office structure and parking lot. A church and private school use is found to the north; a private school use is located to the east; and, single-family uses exist to the south and west.

Zoning/BDA History:

There has been one recent board case and no zoning cases recorded either on or in the immediate vicinity of the subject site within the past five years.

1. B
DA178-106: On October 16, 2018, Panel A granted a special exception to the fence standards regulations related to openness on a property southeast of the subject site.

GENERAL FACTS/STAFF ANALYSIS

The subject site is zoned an R-1ac(A) Single Family District and further encumbered with deed restrictions authorized by the board of adjustment in 1987.

According to DCAD, the property is developed with a one-story, 4,879-square-foot building erected in 1925. The two lots/parcels contain a combined area of 159,430 square feet of area.

The applicant is seeking to terminate the deed restrictions. These restrictions explicitly authorize the board to amend/terminate the instrument.

The existing deed restrictions carry the following development regulations:

- No structures permitted within the floodplain area of Lots 4 and 5.
- Allowed parking on Lots 4 and 5.
- Restricted the use in the existing structure for church related uses only.
- Prohibited any additional structures of any kind.
- Required compliance with the height and floor area requirements of Chapter 51.
- Prohibited the following uses: nursery, preschool, organized school, tennis courts, swimming pools, or athletic facilities of any kind.
- Prohibited buses or trucks.
- Required landscaping per Exhibit E.
 - Certain landscape requirements.
 - Permitted only low-intensity artificial lights.
 - Required preservation of the existing tree cover in the floodplain.
 - Parking and driveway orientation requirements.
- Prohibited illuminated signs.
- Required a completion date of April 15, 1987.

As of September 9, 2022, no letters have been received regarding this request.

Granting the request to terminate the deed restrictions under the board's purview will reinstate the zoning entitlements offered by the base zoning in the R-1ac(A) District unless otherwise rezoned. The existing structure could remain, but all uses would be subject to the allowable uses and development standards for the district if anything were to change.

TIMELINE:

- June 13, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment."
- August 4, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 11, 2022: The Board of Adjustment Chief Planner emailed the applicant the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:
- a copy of the application materials including the Building Official's report on the application;
 - ~~the criteria/standard that the board will use in their decision to approve or deny the request;~~ and **(none exists for this case)**
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 24, 2022: The applicant's representative provided additional information (**Attachment A**).
- August 25, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Conservation District Chief Planner, and the Assistant City Attorney to the Board, the PUD Senior Planner, and the new Assistant City Attorney.

BOARD OF ADJUSTMENT ACTION: September 21, 2022

APPEARING IN FAVOR: Tommy Mann 2728 Harwood St. Dallas, TX
David Martin 2728 Harwood St. Dallas, TX
Jonathan Vinson 2323 Ross Ave. #600 Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 212-085, on application of Stan Copeland represented by David Martin, **grant** the request of this applicant to terminate the deed restrictions as directed by the Board of Adjustment in case number BDA 84-117 and amended by BDA 87-141.

SECONDED: Fleming

AYES: 5 – Shouse, Karnowski, Gambow, Fleming, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

FILE NUMBER: BDA212-084(JM)

BUILDING OFFICIAL'S REPORT: Application of Jarrett Ouellette represented by Anaya Jokabet for special exceptions to the visibility obstruction regulations at 4706 Memphis Street. This property is more fully described as Lots 1 and 2, Block 4/8570 and is zoned an IR Industrial Research District, which requires a 20-foot visibility triangle at drive approaches and a 45-foot visibility triangle at street intersections.

LOCATION: 4706 Memphis Street

APPLICANT: Jarrett Ouellette

REPRESENTATIVE: Anaya Jokabet

REQUESTS:

The applicant proposes to maintain portions of an existing eight-foot-tall solid wood fence and a proposed seven-foot-tall mesh panel fence, in required 20-foot (driveway) and 45-foot (intersection of Memphis Street and Mississippi Avenue) visibility triangles, which will require special exceptions to the visibility obstruction regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d)(3) of the Dallas Development Code states that 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:

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when in the opinion of the board, the item will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making.

The Transportation Development Services Senior Engineer has reviewed the requests for special exceptions to the visual obstructions regulations and provided two technical opinions for the board's consideration (**Attachments A and B**). Ultimately, the 20-foot visibility triangle encroachment from the private drive onto Memphis Street does not generate objection. However, the 45-foot visibility triangle encroachment does cause concern and is not supported for approval.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	IR Industrial Research District
<u>North:</u>	IR Industrial Research District
<u>East:</u>	IR Industrial Research District
<u>South:</u>	A(A) Agricultural District
<u>West:</u>	IR Industrial Research District

Land Use:

The subject site and surrounding properties are developed with office/showroom warehouse uses. The southern property is under construction and beyond that is the levee.

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 within the past five years.

GENERAL FACTS/STAFF ANALYSIS

The subject site is zoned an IR Industrial Research District which requires compliance with visual obstruction regulations at driveways and intersections. The property is located on the northeast corner of Memphis Street and Mississippi Avenue.

According to DCAD, the property is developed with a one-story, 7,820-square-foot building erected in 1972. The lot contains 12,954 square feet of area.

A fence permit was issued in February 2022 and accounts for much of the fence currently installed and solid wood up to eight-feet-in-height. Notes on the permit state: "INSTALL WOOD FENCE (122 LF) on the NORTH, EAST, AND A LITTLE SOUTH EAST OF THE PROPERTY. NOT TO EXCEED 9 FT ABOVE GRADE. **NOT TO ENCROACH VISIBILITY TRIANGLE.**" The applicant is seeking to extend the fence to encroach into the visibility triangles from the private

drive onto Memphis Street and at the intersection of Memphis Street and Mississippi Avenue. These sections of the fence being attached to the existing wood fence permitted are largely the carbon steel mesh fence sections and will wrap the remainder of the parking lot areas and provide gated access to the site.

Section 51A-4.602(d) of the Dallas Development Code states that 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 alleys); 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 following information is shown on the submitted site plan and elevations:

- The parcel contains about 91 feet of frontage along Memphis Street and 124 feet of frontage along Mississippi Avenue.
- The existing fence will be connected to the proposed solid western cedar fence up to eight-feet-in-height and travelling southbound toward the Mississippi Avenue property line. A new 12-foot section of cedar fence will be installed along that property line before connecting to the carbon steel mesh fence proposed.
- The elevation shows the western cedar fence to be horizontal slats with a one-inch by six-inch dimension connected to galvanized posts at six-foot intervals.
- The 45-foot triangle is depicted improperly. The applicant must revise the plan to draw the triangle based on the projected street curbs (**Attachment C**).
- Portions of the fence encroaching into the 45-foot triangle are proposed and contain about 29 feet of carbon steel mesh fencing rounding the corner of the property line at the intersection of the two streets.
- The elevation shows the carbon steel mesh fencing to be seven feet tall and open in nature with a two-by-two-inch mesh pattern and cedar posts at six-foot intervals.
- There are two driveways onto the site from Memphis Street. Each driveway is proposed to have a gated access:
 - One 15-foot carbon steel mesh sliding gate at the northern driveway.

- One 12-foot carbon steel mesh sliding gate at the southern driveway.
- The sliding gates are proposed to connect to the carbon steel mesh fencing rounding the corner along the property line at the 45-foot visibility triangle onto Mississippi Avenue.

The applicant has requested to obstruct the 20-foot visibility triangles at the private driveways from the site onto Memphis Street. Additionally, the fence structure is proposed to encroach into the 45-foot visibility triangle at the southwest corner of the property, the northeast intersection of Memphis Street and Mississippi Avenue. The applicant has the burden of proof to show that the visibility obstructions items do not constitute a traffic hazard.

The Transportation Development Services Senior Engineer has provided a technical opinion for the board's consideration, citing no objection to the request for the 20-foot visibility triangles subject to revising the plan (**Attachment A**) and recommending denial of the 45-foot visibility triangle encroachment (**Attachment B**). Additionally, the senior engineer provided an illustration of the likely correction needed to accurately represent the 45-foot visibility triangle on the plan; however, this should be verified by physical confirmation of the projected street curbs (**Attachment C**).

As of September 9, 2022, the no letters have been received regarding this request.

Staff conducted a field visit of the site and surrounding area and noticed no other fences appear to be constructed above the minimum height of four feet within the front yard setback and/or obstruct the required 20-foot visibility triangle at the drive approach.

The applicant has the burden of proof to show that the special exceptions to construct the fence in required visibility obstruction triangles:

- Visibility obstructions items are made on the basis of the item(s) not constituting a traffic hazard, and
- Technical opinions provided from the city engineer.

Granting these requests with a condition imposed that the applicant complies with a **revised site/elevation plan, as suggested**, would limit the encroachments and locations of those items within the 20-foot visibility triangles at the private drive approaches and the 45-foot visibility triangle at the intersection of the two street, as shown on the plans.

TIMELINE:

- June 13, 2022: The applicant submitted an "Application/Appeal to the Board of Adjustment."
- August 4, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 11, 2022: The Board of Adjustment Chief Planner emailed the applicant the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be

incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application;
- 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."

August 25, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Conservation District Chief Planner, and the Assistant City Attorney to the Board, the PUD Senior Planner, and the new Assistant City Attorney.

August 29, 2022: The Transportation Development Services Senior Engineer provided a comment sheets and a markup for illustrative purposes (**Attachments A, B, C**).

BOARD OF ADJUSTMENT ACTION: September 21, 2022

APPEARING IN FAVOR: None

APPEARING IN OPPOSITION: None.

MOTION: **Karnowski**

I move that the Board of Adjustment in Appeal No. BDA 212-084, hold this matter under advisement until **October 19, 2022**.

SECONDED: **Cannon**

AYES: 5 – Shouse, Karnowski, Gambow, Fleming, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

MOTION: **Karnowski**

I move to adjourn the Panel B hearing.

SECONDED: **Cannon**

AYES: 5 – Shouse, Karnowski, Gambow, Fleming, Cannon

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

The meeting was adjourned at **1:39 P.M. on September 21, 2022**

Cheryl Gaudin
CHAIRPERSON

signed: 10/19/22

Chris Hamell
BOARD ADMINISTRATOR

Jack
BOARD SECRETARY

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