

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, FEBRUARY 20, 2018**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, Vice-chair, John Jones, regular member, Jay Narey, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Elizabeth Nelson, regular member

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Atty., Jennifer Munoz, Senior Planner, Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, David Nevarez, Engineering, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Peter Schulte, Vice-chair, John Jones, regular member, Jay Narey, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: Elizabeth Nelson, regular member

STAFF PRESENT AT HEARING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Atty., Jennifer Munoz, Senior Planner, Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, David Nevarez, Engineering, and Trena Law, Board Secretary

11:20 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 20, 2018** docket.

1:09 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 16, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2018

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA178-017(SL)

BUILDING OFFICIAL'S REPORT: Application of Russell Thomas for a special exception to the fence standards and for special exceptions to the visual obstruction regulations at 5530 Falls Road. This property is more fully described as Lot 4, Block 6/5607, 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 6 foot 6 inch high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence standards regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5530 Falls Road

APPLICANT: Russell Thomas

REQUESTS:

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

1. A special exception to the fence standards related to fence height of 2' 6" is made to construct and maintain a 6' high open wrought iron fence and gate with 6' 6" high brick columns in the front yard setback; and
2. Special exceptions to the visual obstruction regulations are made to locate and maintain portions of the aforementioned 6' high open wrought iron fence/gate and 6' 6" high brick columns located in one of two or both, 20' visibility triangles on both sides of the driveway into the site from this street.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

Section 51A-4.602(a)(11) 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:

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 (Fence special exception):

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):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items to be located in the visibility triangles do not constitute a traffic hazard.

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: R-1ac(A) (Single family residential 1 acre)
West: R-1ac(A) (Single family residential 1 acre)

Land Use:

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

Zoning/BDA History:

1. BDA145-029, Property at 5522 Falls Road (the lot west of the subject site)

On March 17, 2015, the Board of Adjustment Panel A granted requests for a special exception to the fence standards regulations of 7' 1" for a fence in the front yard setback and 3' 6" for a fence in the side yard setback, and imposed the following condition: Compliance with submitted revised site plan/elevation is required.

The case report stated the requests were made to construct and maintain in the front yard setback parallel to the street an approximately 90' long, 5' high open wrought iron fence with two entry features that include 8' high open wrought iron gates flanked by 6' – 7' high masonry walls and caps; perpendicular to the street on the east side: an approximately 38' long, 5' high open wrought iron fence, with 6'- 7' high masonry columns, and perpendicular to the street on the west side: an approximately 23' long, 5' high open wrought iron fence, and an approximately 15' long, 10' 7" high fence (8' wood fence atop a 2' 7" high retaining wall) with 11' 1" high masonry columns; and in the side yard setback on the east side of the site an approximately 70' long, 12' 6" high masonry fence with 12' 6" high columns on a site being developed that was being with a single family home.

2. BDA178-019, Property at 5539 Falls Road (the lot northeast of the subject site)

On February 22, 2018, the Board of Adjustment Panel C will consider a request for a special exception to the fence standards regulations related to height regulations of 6', made to construct and maintain a 7' 3" high open wrought iron fence with 8' stone columns and a 10' high open wrought iron entry gate flanked by 9' high stone columns on a site being developed with a single family home.

GENERAL FACTS/STAFF ANALYSIS (Fence standards special exception):

- The request for a special exception to the fence standards related to height focus on constructing and maintaining a 6' high open wrought iron fence and gate with 6' 6" high brick columns in the front yard setback on a site being developed with a single family home.
- Section 51A-4.602(a)(2) of 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 property is located in an R-1ac(A) zoning district which requires a minimum front yard setback of 40 feet.
- The submitted elevation indicates that the proposal would reach a maximum height of 6' 6" to account for height of the brick columns.
- The submitted site plan denotes the following:
 - The proposal in the front yard setback is represented as being approximately 100' in length parallel to this street in the front yard setback.
 - The proposal is represented as being located approximately on the front property line, and approximately 15' from the pavement line.
- A single family lot fronts the proposal on the subject site. This lot has no fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area on the street from Hollow Way Drive to Hathaway Street and noted one other fence that appeared to be over 4' in height and in a front yard setback. This fence (a 5' high open wrought iron fence with two entry features that include 8' high open wrought iron gates flanked by 6' – 7' high masonry walls and caps) is located immediately west of the subject site and appears to be a result of special exceptions to the fence standards granted by the Board in 2015 (see the "Zoning/BDA History" section of this case report for additional details).
- As of February 9, 2018, a petition signed by 4 persons had been submitted in support of the application, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence standards related to fence height of 2' 6" 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 located in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

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

- The requests for special exceptions to the visual obstruction regulations focus on locating and maintaining portions of a 6' high open wrought iron fence/gate and 6' 6" high brick columns in one of two or both 20' visibility triangles on both sides of the driveway into the site from the street on a site being developed with a single family home.

- Section 51A-4.602(d)(1) of the Dallas Development Code 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 submitted site plan and submitted elevation indicates portions a 6’ high open wrought iron fence/gate and 6’ 6” high brick columns located in the one of two or both 20’ visibility triangles on both sides of the driveway into the site from this street.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain a 6’ high open wrought iron fence/gate and 6’ 6” high brick columns located in one of two or both, 20’ visibility triangles on both sides of the driveway into the site do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and submitted elevation would limit the items located in the 20’ drive approach visibility triangles to that what is shown on these documents – a 6’ high open wrought iron fence/gate with 6’ 6” high brick columns.

Timeline:

November 14, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 5, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 5, 2018: 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 January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 9th 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 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction,

the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

February 8, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2018

APPEARING IN FAVOR: Guy Thomas, 6310 Joyce Way, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Jones

I move that the Board of Adjustment, in Appeal No. **BDA 178-017(SL)**, on application of Russell Thomas, **grant** the request of this applicant to construct and maintain a six-foot six-inch high fence as a special exception to the height requirement for fences contained 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 elevation is required.

SECONDED: Sibley

Schulte, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 4- 0 (unanimously)

MOTION #2: Narey

I move that the Board of Adjustment, in Appeal No. **BDA 178-017(SL)**, on application of Russell Thomas, **grant** the request of this applicant to construct and maintain items in the visibility triangles at the Property's driveways as a special exception to the visibility obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. 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: Jones
Schulte, Jones, Narey, Sibley
NAYS: 0 -
MOTION PASSED: 4- 0 (unanimously)

FILE NUMBER: BDA178-025(SL)

BUILDING OFFICIAL'S REPORT: Application of Joe Cortez to enlarge a nonconforming use at 2920 Kendale Drive. This property is more fully described as Lot 2A, Block 6/5778, and is zoned LO-1, which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming multifamily use, which will require a request to enlarge a nonconforming use.

LOCATION: 2920 Kendale Drive

APPLICANT: Joe Cortez

REQUEST:

A request is made to enlarge a nonconforming “multifamily” use (In Place Apartments), specifically by remodeling/ “enlarging” five of six existing structures on the site, not by increasing the size of the footprints of these structures but by increasing the height of these structure from 17’ 4” to 22’ 6” : adding new hip roofs to these existing flat roof structures from 17’ 4” to 22’ 6” in height.

STANDARD FOR ENLARGING A NONCONFORMING USE:

Section 51A-4.704(b)(5)(B) of the Dallas Development Code states the board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STAFF RECOMMENDATION:

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on when, *in the opinion of the Board*, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

BACKGROUND INFORMATION:

Zoning:

Site: LO-1 (Limited office)

North: CR (Community Retail)
South: CR (Community Retail)
East: CR (Community Retail)
West: LO-1 (Limited office)

Land Use:

The subject site is developed as a “multifamily” use (In Place Apartments). The submitted site plan represents six building footprints and a pool on the subject site. The area to the north is developed with a park (Overlake Park), the area to the east is developed with retail and multifamily uses; the area to the south is developed with commercial uses; and the area to the west is developed with multifamily 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 the enlargement of a nonconforming “multifamily” use (In Place Apartments) on the subject site, which in this particular case, involves the remodeling/ “enlarging” five of six existing structures on the site, not by increasing the size of the footprints of these structures but by adding new hip roofs to these existing flat roof structures. (According to submitted elevations, flat roof structures that are 17’ 4” would be remodeled by adding hip roofs where the remodeled structures would be 22’ 6” in height).
- The subject site is zoned LO-1 (Limited Office).
- A “multifamily” use is not permitted in Limited Office districts.
- Section 51A-2.102(89) of the Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- Section 51A-4.704(b)(5)(A) of the Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- It appears from research conducted by the Board Administrator/Chief Planner that the multifamily use became a nonconforming use in the late 80’s when (during the city-wide zoning transition effort from Chapter 51 to Chapter 51A) the property that had been zoned O-1 (that permitted multifamily use) was changed to a less cumulative zoning district LO-1 (that does not permit multifamily use). The City has recognized the multifamily use on the property therefore to be a legal nonconforming use.
- Any use permitted in the LO-1 zoning district (that includes office use) could reach a maximum structure height of 70 feet without going to the board of adjustment for a variance to the height regulations. But because multifamily use is no longer a permitted use in the LO-1 zoning district, the applicant must seek this request to the

board to enlarge the nonconforming multifamily use or, in this case, to increase the height of the existing structures from what is represented on the submitted elevation (page 8 of 12 in the attachment) from 17' 4" to 22' 6".

- The applicant has submitted site plans and elevations of six structures on the site of which five of six are to be enlarged by adding new roofs.
- This application is made to enlarge a nonconforming *use*. The application is *not* made to enlarge a nonconforming *structure*. The structures that comprise the nonconforming "multifamily" use would be in compliance with development code standards such as setbacks, coverage requirements, height requirements, parking requirements, etc. Therefore, the existing structures even if new roofs were added would conforming structures as it relates to development code requirements, located within a broader land use classification (multifamily) that can only be deemed a conforming *use* once and if the zoning is changed.
- Records from Building Inspection Department indicate that the "multifamily" use has been identified by Building Inspection as a nonconforming use.
- The applicant has been informed of the Dallas Development Code provisions pertaining to "Nonconforming Uses and Structures," and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The applicant has the burden of proof to establish that the enlargement of the nonconforming use:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, with a condition imposed that the applicant comply with the submitted site plans and elevations, the enlargement of the nonconforming use would be limited to what is shown on these documents.

Timeline:

December 15, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 5, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 5, 2018: 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 January 31st deadline to

submit additional evidence for staff to factor into their analysis; and the February 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the provision from the Dallas Development Code that provides the standard as to how the board is able to grant a request to enlarge a nonconforming use. (51A-4.704(b)(5)), and the entire section from the code related to nonconforming uses and structures (51A-4.704), advising the applicant that his request does not eliminate the nonconforming status of the use on the site as much as it potentially (if the board chooses to grant your request) merely allows it to be enlarged; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

February 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Jones**

I move to grant that the Board of Adjustment grant application **BDA 178-025(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plans and elevations is required.

SECONDED: **Sibley**

AYES: 4 – Schulte, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA178-016(SL)

BUILDING OFFICIAL’S REPORT: Application of Mike Northrup to appeal the decision of the administrative official in removing a stop work order at 4217 Swiss Avenue. This property is more fully described as Lot 1A, Block 10/740, and is zoned PD 298 (Subdistrict 10), which the applicant proposes to appeal the decision of an administrative official.

LOCATION: 4217 Swiss Avenue

APPLICANT: Mike Northrup

February 20th Public Hearing Notes:

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

REQUEST:

A request is made to appeal the decision of the administrative official, in this particular application, the Building Official, where the submitted application states “to appeal decision of Administrative Official to lift a “stop work” order relating to building permit 1512041028 issued to Encore Enterprises” on a site that is under development.

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 under development. The areas to the north, south, east and west are developed with mix of uses.

Zoning/BDA History:

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| 1. BDA167-014, Property at 4802 4217 Swiss Avenue (the subject site) | On February 21, 2017, the Board of Adjustment Panel A affirmed the decision of the administrative official and denied the applicant's request without prejudice. |
| 2. BDA167-133, Property at 4802 4217 Swiss Avenue (the subject site) | On November 17, 2017, the applicant withdrew an appeal of the decision of the administrative official that had been tentatively scheduled for Board of Adjustment Panel A's January 16, 2018 hearing. |

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:

- November 29, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 5, 2018: The Board of Adjustment Secretary assigned this appeal 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 5, 2018: The Board Administrator emailed the applicant the following information:
- an attachment that provided the appeal date and panel that will consider the appeal; the January 31st 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 appeal); and the February 9th 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 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

February 9, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

February 9, 2018: The assistant city attorney assisting the administrative official submitted documentation on this appeal to the Board Administrator (see Attachment B).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2018

APPEARING IN FAVOR: Mike Northrup, 901 Main St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Sonia Ahmad, 1500 Marilla St., Dallas, TX
Megan Wimer, 320 E. Jefferson, Dallas, TX
Phi Sikes, 320 E. Jefferson, Dallas, TX

1:48 P.M.: Executive Session Begins

1:54 P.M.: Executive Session Ends

MOTION: Sibley

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. **BDA 178-016(SL)**, on application of Mike Northrup, 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 **reverse** the decision of the administrative official and **grant** the relief requested by this applicant.

SECONDED: Jones

AYES: 4 – Schulte, Jones, Narey, Sibley
NAYS: 0 -
MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA178-022(SL)

BUILDING OFFICIAL’S REPORT: Application of Ray Quintanilla, represented by Kori Haug, for a special exception to the landscape regulations at 4711 Maple Avenue. This property is more fully described as Lot 1B, Block 6/2289, and is zoned PD 193 (GR), which requires mandatory landscaping. The applicant proposes to construct and or maintain structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 4711 Maple Avenue

APPLICANT: Ray Quintanilla,
Represented by Kori Haug

REQUEST:

A request for a special exception to the landscape regulations is made to increase nonpermeable coverage (additional new surface parking lot) on the subject site that is in part developed with a vacant 1970’s nonresidential structure and in part undeveloped, and not fully provide required landscaping, more specifically, to not fully provide street trees in the required location, sidewalks at the required widths, screening of the existing parking lot, and landscape site area. (The applicant intends to redevelop the site with a restaurant/bar/market type use – Maple Street Food Hall and Bar).

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 revised landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because the screening of off-street parking and street tree planting that the

plan provides does not compromise the spirit and intent of the landscape regulations.

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BACKGROUND INFORMATION:

Site: PD 193 (GR) (Planned Development, General Retail)
North: PD 193 (GR) (Planned Development, General Retail)
South: PD 193 (GR) (Planned Development, General Retail)
East: PD 193 (GR) (Planned Development, General Retail)
West: PD 193 (GR) (Planned Development, General Retail)

Land Use:

The subject site is in part developed with a vacant 1970's nonresidential structure and in part undeveloped. The areas to the north, east, south, and west are developed with commercial/retail uses; and the area to the west is developed with multifamily uses.

Zoning/BDA History:

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

GENERAL FACTS/ STAFF ANALYSIS:

- This request for a special exception to the landscape regulations focuses on increasing nonpermeable coverage (additional new surface parking lot) on the subject site that is in part developed with a vacant 1970's nonresidential structure and in part undeveloped, and not fully providing required landscaping, more specifically, to not fully provide street trees in the required location, sidewalks at the required widths, screening of the existing parking lot, and landscape site area. (The applicant intends to redevelop the site with a restaurant/bar/market type use – Maple Street Food Hall and Bar).
- 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 B). The Chief Arborist states the applicant is requesting a special exception to the landscape regulations of PD 193 (GR) related to the construction of new parking for an existing structure which requires landscaping to standards for GR districts – landscaping that includes landscape site area, street trees, sidewalks, and screening of off-street parking.
- The City of Dallas Chief Arborist's memo states that an alternative landscape plan is submitted which provides for all 11 street trees along Maple Avenue and the mandatory screening of off-street parking for the new parking lot, and that narrow

landscape areas are included within the parking lot and on the northern edge of the property.

- The Chief Arborist's memo states the alternate landscape plan is deficient in the following:
 1. Street trees are required 2.5'-5' from back of curb. Trees are placed further from the street and between the sidewalk and property boundary.
 2. Sidewalks are required to be 6' wide for commercial uses. The existing sidewalks are measured at 4' wide.
 3. Screening of off-street parking is provided for the new parking lot areas but not for the existing parking lot.
 4. Landscape site area: 10% required, provides 6.6%. Extensive parking and vehicle maneuvering area demands restrict the expansion of landscape areas.
- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because the screening of off-street parking and street tree planting that the plan provides does not compromise the spirit and intent of the landscape regulations.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a revised alternate landscape plan has been submitted that is deficient in meeting the landscape site area, street trees, sidewalks, and screening of off-street parking requirements of the PD 193 landscape 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 revised alternate landscape plan as a condition, the site would be granted exception from full compliance to landscape site area, street trees, sidewalks, and screening of off-street parking of the PD 193 landscape requirements of the Oak Lawn PD 193 landscape ordinance.

Timeline:

December 13, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 5, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 5, 2018: 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 January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 9th 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.

January 29, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

February 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

February 8, 2018: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2018

APPEARING IN FAVOR: Kori Haug, 4245 N Central Expwy, Dallas, TX
Ray Quintanilla, 4711 Maple Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment, in Appeal No. **BDA 178-022(SL)**, on application of Ray Quintanilla represented by Kori Haug, **grant** the request of this applicant for a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised landscape plan is required.

SECONDED: **Jones**

AYES: 4 – Schulte, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

MOTION: **Sibley**

I move to adjourn this meeting.

SECONDED: **Jones**

AYES: 4 – Schulte, Jones, Narey, Sibley
NAYS: 0 -
MOTION PASSED: 4 – 0 (unanimously)

2:48 P. M.: Board Meeting adjourned for **February 20, 2018.**

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.