

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, August 21, 2018**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, Chair, Elizabeth Nelson, regular member, John Jones, regular member, Jay Narey, regular member Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: No One

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, David Nevarez, Engineering, Elaine Hill, Board Secretary, Neva Dean, Asst. Director

MEMBERS PRESENT AT HEARING: Peter Schulte, Chair, Elizabeth Nelson, regular member, John Jones, regular member, Jay Narey, regular member Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No One

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, David Nevarez, Engineering, Elaine Hill, Board Secretary, Neva Dean, Assistant Director

11:12 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 21, 2018** docket.

1:08 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 A, June 19, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: August 21, 2018

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA178-081(SL)

BUILDING OFFICIAL'S REPORT: Application of Salvador Vera, represented by Susana Robles, for a special exception to the side yard setback regulations for a carport at 2954 Obannon Drive. This property is more fully described as Lot 16, Block 7/5976, and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a carport in a required side yard and provide a 0-foot setback, which will require a 5-foot special exception to the side yard setback regulations.

LOCATION: 2954 Obannon Drive

APPLICANT: Salvador Vera
Represented by Susana Robles

REQUEST:

A request for a special exception to the side yard setback regulations of 5' is made to maintain a carport located 0' from the site's eastern side property line or 5' into this 5' required side yard setback on a site developed with a single-family home structure/use.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is, when in the

opinion of the board, the carport will not have a detrimental impact on surrounding properties.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single-family home. The area to the north, east, west and south 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:

- This request for a special exception to the side yard setback of 5' focuses on maintaining an approximately 450 square foot carport 0' from the site's eastern side property line or 5' into the site's eastern 5' required side yard setback, on a site developed with a single-family home structure/use.
- A 5' side yard setback is required in the R-7.5(A) zoning district.
- The submitted site plan and elevations represent the size and materials of the carport, and its location 0' from the site's eastern side property line.
- The submitted site plan represents the following:
 - The carport is approximately 40' in length and approximately 11' in width (approximately 450 square feet in total area) of which approximately 45 percent is located in the eastern 5' side yard setback.
- The submitted elevation represents the following:
 - Ranging in height from 7' 9" – 8' 6".
 - Gauge metal roofing.
 - Metal columns.
- The Board Administrator conducted a field visit of the area approximately 500 feet east and west of the subject site and noted no other carports that appeared to be located in a side yard setback.
- As of August 10, 2018, no letters had been submitted in support of or in opposition to this application.
- The applicant has the burden of proof in establishing the following:

- that granting this special exception to the side yard setback regulations of 5’ will not have a detrimental impact on surrounding properties.
- Granting this request and imposing the following conditions would require the carport to be maintained in the location and of the heights and materials as shown on these documents:
 1. Compliance with the submitted site plan and elevation is required.
 2. The carport structure must remain open at all times.
 3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
 4. All applicable building permits must be obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.
- If the Board were to grant this request and impose the submitted site plan and elevation as a condition to the request, the structure in the side yard setback would be limited to that what is shown on these documents – a carport located on the eastern side property line or 5’ into this required 5’ side yard setback.

Timeline:

- May 2, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 10, 2018: The Board Administrator emailed the applicant’s 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 August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.”
- August 7, 2018: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: August 21, 2018

APPEARING IN FAVOR: Susana Robles, 2954 OBannon Dr., Dallas, TX 75224

Salvador Vera, 2954 Obannon Dr., Dallas, TX 75224

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move to **grant** the Board of Adjustment application **BDA187-081** 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 is consistent with the general purpose and intent of the Code, as applicable, to wit. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted site plan and elevation is required.
2. The carport structure must remain open at all times.
3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
4. All application building permits must be obtained.
5. No item (other than a motor vehicle) may be stored in the carport.

SECONDED: Sibley

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-082(SL)

BUILDING OFFICIAL’S REPORT: Application of Lakeith Fowler for a variance to the front yard setback regulations at 1322 Burlington Boulevard. This property is more fully described as Lot 1, Block 5/3495, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct a structure and provide a 10-foot front yard setback, which will require a 15 foot variance to the front yard setback regulations.

LOCATION: 1322 Burlington Boulevard

APPLICANT: Lakeith Fowler

REQUEST:

A request for a variance to the front yard setback regulations of 15' is made to construct and maintain a 1 1/2-story single family home structure with an approximately 2,700 square foot building footprint, part of which is to be located 10' from one of the site's two front property lines (Edgefield Avenue) or 15' into this 25' front yard setback on a site that is undeveloped.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of 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, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-7.5(A) zoning district in that it is restrictive in area due to having two, 25' front yard setbacks when most lots in this zoning district have one 25' front yard setback. The 50' wide subject site has 20' of developable width available once a 25' front yard setback is accounted for on the west and a 5' side yard setback is accounted for on the east. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that the square footage of the proposed home on the subject site at approximately 2,700 square feet is commensurate to 13 other homes in the same R-7.5(A) zoning district that have average home size of approximately 4,200 square feet.

BACKGROUND INFORMATION:

Zoning:

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

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

Land Use:

The subject site is undeveloped. The areas to the north, east, south 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:

- This request for variance to the front yard setback regulations of 15' focuses on constructing and maintaining a 1 1/2-story single family home structure with an approximately 2,700 square foot building footprint, part of which is to be located 10' from one of the site's two front property lines (Edgefield Avenue) or 15' into this 25' front yard setback on an undeveloped site.
- The property is located in an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.
- The subject site is located at the southeast corner of Burlington Boulevard and Edgefield Avenue. Regardless of how the structure is proposed to be oriented to front Burlington Boulevard, the subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along Burlington Boulevard, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25' front yard setback along Edgefield Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. However, the site's Edgefield Avenue frontage that would function as a side yard on the property is treated as a front yard setback nonetheless, to maintain the continuity of the established front yard setback established by the lots to the south that front/are oriented west towards Edgefield Avenue.
- The submitted site plan indicates that the proposed structure is located 10' from the Edgefield Avenue front property line or 15' into this 25' front yard setback.
- According to DCAD records, the "main improvement" for property addressed at 1322 Burlington Boulevard is structure built in 1924 with 1,120 square feet of living/total area, and that "additional improvements" are a 196 square foot room addition and a 240 square foot detached carport.
- The subject site is flat, rectangular in shape (approximately 150' x 50'), and according to the submitted application is 0.17 acres (or approximately 7,500 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.

- The site plan represents that approximately 1/2 of the structure is located in the 25' Edgefield Avenue front yard setback.
- The 50' wide subject site has 20' of developable width available once a 25' front yard setback is accounted for on the west and a 5' side yard setback is accounted for on the east. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width.
- No variance would be necessary if the Edgefield Avenue frontage were a side yard since the site plan represents that the proposed home is 10' from the Edgefield Avenue property line and the side yard setback for properties zoned R-7.5(A) is 5'.
- The applicant has submitted a document indicating that square footage of the proposed home on the subject site is approximately 2,700 square feet and the average of square footage of 13 other homes in R-7.5(A) is approximately 4,200 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 structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 10' from the site's Edgefield Avenue front property line (or 15' into this 25' front yard setback).

Timeline:

- May 4, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 10, 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 August 1st deadline to

submit additional evidence for staff to factor into their analysis; and the August 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."

July 27, 2018 The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

August 7, 2018: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: August 21, 2018

APPEARING IN FAVOR: LaKeith Fowler, 625 Gardenia St., DeSoto, TX 75115

APPEARING IN OPPOSITION: No One

MOTION: **Schulte**

I move to **grant** the Board of Adjustment application **BDA187-082** 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 is consistent with the general purpose and intent of the Code, as applicable, to wit. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Sibley**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-084(OA)

BUILDING OFFICIAL’S REPORT: Application of Karen S. Levinson for a special exception to the fence standards regulations at 5715 Buffridge Trail. This property is more fully described as Lot 20, Block 11/8760, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 5 foot 6-inch-high fence in a required front yard, which will require a 1 foot 6-inch special exception to the fence standards regulations.

LOCATION: 5715 Buffridge Trail

APPLICANT: Karen S. Levinson

REQUESTS:

A request for a special exception to the fence standards regulations related to height of 1’ 6” is made to maintain a 5’ 6” high wrought iron fence in the required front yard on a site developed with a single-family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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 fence height of 1’ 6” focuses on maintaining a 5’ 6” high wrought iron fence in the required front yard on a site developed with a single-family home.
- 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-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.
- The applicant had submitted a site plan and elevation that shows the proposal in the front yard setback reaching a maximum height of 5’ 6”.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 73’ in length parallel to Buffridge Trail and approximately 25’ perpendicular to Buffridge Trail on the north and south sides of the site in this front yard setback.
 - The proposal is represented as being located approximately on the front property line. (The distance between the fence and the pavement line is approximately 11’).
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area and no other fences were noted that appeared to be above 4’ in height and located in a front yard setback.
- As of August 10th, no letters in opposition have been submitted and 15 letters have been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 5’ 6” in height) will not adversely affect neighboring property.
- Granting this special exception of 1’ 6” with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4’ in height to be constructed/maintained in the location and of the heights and materials as shown on these documents.

Timeline:

March 17, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 10, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

July 11, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.

August 7, 2018: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: August 21, 2018

APPEARING IN FAVOR: Karen Levinson, 5715 Buffridge Trl., Dallas, TX 75252

APPEARING IN OPPOSITION: No One

MOTION: **Schulte**

I move to **grant** the Board of Adjustment application **BDA187-084** 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 is consistent with the general purpose and intent of the Code, as applicable, to wit. 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**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-073(OA)

BUILDING OFFICIAL'S REPORT: Application of Blake Byrd of Tatum Brown Custom Homes, represented by Blake Byrd, for a variance to the front yard setback regulations, and for special exceptions to the fence standards and visual obstruction regulations at 5333 Deloache Avenue. This property is more fully described as Lot 16, Block 5/5595, and is zoned R-1ac(A), which requires a front yard setback of 40 feet, limits the height of a fence in the front yard to 4 feet, and requires a 20-foot visibility triangle at driveway approaches and a 45-foot visibility triangle at street intersections. The applicant proposes to construct/maintain a structure and provide a 7 foot front yard setback, which will require a 33 foot variance to the front yard setback regulations, to construct/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/maintain items in required visibility triangles at driveway approaches and at a street intersection, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5333 Deloache Avenue

APPLICANT: Blake Byrd of Tatum Brown Custom Homes
Represented by Blake Byrd

REQUESTS:

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

1. A variance to the front yard setback regulations of 33' is made to construct/maintain a fountain structure to be located 7' from the front property line or 33' into this 40' front yard setback;
2. A special exception to the fence standards related to height of 2' 6" is made to construct/maintain a 6' high open combination steel rod/stone fence with 6' 6" high brick columns, and steel rod swinging gates in the site's required front yard;
3. Special exceptions to the visual obstruction regulations are made to construct and maintain:
 - a) portions of the aforementioned 6' high open combination steel rod/stone fence with 6' 6" high brick columns, and a steel rod swinging gate in the two 20' visibility triangles on both sides of the north driveway into the site on Alva Court; and
 - b) portions of the aforementioned 6' high open combination steel rod/stone fence with 6' 6" high brick columns in the 45' visibility triangle at the intersection of Deloache Avenue and Alva Court.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of 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, lot 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.

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:

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:

Denial.

Rationale:

- Staff concluded that the applicant had not substantiated how 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 it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-1ac (A) zoning district.

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 20' visibility triangles at the driveway):

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 request.
- Staff concluded that the request for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the item located in the visibility triangles do not constitute a traffic hazard.

STAFF RECOMMENDATION (visual obstruction special exceptions 45' visibility triangle at intersection of Alva Court and Deloache Avenue):

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 request commenting that: 1) The property proposes a visibility improvement to intersection leaving a 30' by 30' visibility triangle; 2) The intersection effectively functions as a T-Intersection; and 3) The background traffic is generally limited to 9 homes.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA056-003, Property at 9423 Alva Court (the lot north to the subject site)

On October 18, 2005, the Board of Adjustment Panel A granted requests for a special exception to the fence regulations of 3' and for special exceptions to the visual obstruction regulations and imposed the following condition: Compliance with submitted revised site plan and revised fence elevation is required.

The case report stated the special exception to the fence standards was made to construct and maintain a 4' 8" high open metal fence (with an 18" brick base), 5' high brick columns, two 7' high arched entry gates with 6' high brick entry columns; and that the special exceptions to the visibility obstruction regulations were made to construct and maintain the fence and columns as described above in four, 20'-visibility triangles at the two drive approaches to the site on Alva Court.

2. BDA178-041, Property at 9434 Alva Court (the lot northeast to the subject site)

On May 21, 2018, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 8' 4". The board imposed the following condition: compliance with the submitted site/landscape plan is required.

The case report stated that the request was made to construct 9' high columns, and two 8' high entry gates one of which has 12' 4' high entry gate columns and an 8' high open wrought iron fence.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- The request for a variance to the front yard setback regulations of 33' focuses on constructing and maintaining a fountain structure to be located 7' from the front property line or 33' into this 40' front yard setback on a site that is currently being developed with a single family home.
- The subject site is zoned R-1ac (A) which requires a 40' front yard setback.
- The subject site is located at the northwest corner of Deloache Avenue and Alva Court. This site has one front yard setback on Alva Court.
- The submitted plan represents that a fountain structure is proposed to be located as close as 7' from the site's front property line (or 33' into the 40' front yard setback).
- The following additional information was gleaned from the submitted site plan and elevation:
 - The fountain structure is represented as being approximately 55' in length parallel to Alva Court.

- The fountain structure is represented as being located approximately 7' - 21' from the property line.
- The fountain structure reaches approximately a maximum height of 5' 5'.
- On July 13, 2018, the applicant submitted a revised elevation plan (attachment C) representing the revised elevation for the fountain in the front yard setbacks. The fountain structure now reaches approximately a maximum height of 3' 9'.
- The subject site is flat, rectangular in shape, and according to the application, is 0.947 acres (or approximately 41,251 square feet) in area. The site is zoned R-1 ac (A) where the typical lot size is 43,560 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-1ac (A) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) zoning classification.
- If the Board were to grant this request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which is a fountain structure to be located 7' from the site's front property line or 33' into the required 40' front yard setback.

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- The request for a special exception to the fence standards related to height of 2' 6" focuses on constructing/maintaining a 6' high open combination steel rod/stone fence with 6' 6" high brick columns, and steel rod swinging gates in the site's required front yard on a site being developed with a single-family home.
- The subject site is zoned R-1 AC (A) which requires a 40' front yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is located at the northwest corner of Deloache Avenue and Alva Court. The site has one front yard setback on Alva Court.
- The applicant submitted site plan and a site plan/elevation representing the proposed fences in the front yard setback with notations indicating that the proposal reaches a maximum height of 6' 6".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 164' in length parallel to Alva Court and approximately 40' perpendicular to Alva Court on the north and south sides of the site in this front yard setback.

- The proposal is represented as being located approximately at the front property line or approximately 12' – 14' from the pavement line.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area and noted several other fences that appeared to be above 4' in height along Alva Court and Deloache Ave located in front yard setback, some of which have recorded BDA history (see the Zoning/BDA History section of this case report for details, one that does not.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to fence height of 6' 6" will not adversely affect neighboring property.
- As of August 10th, no letters have been submitted in support of or in opposition to this request.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 2' 6" 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 exception driveways):

- These requests for special exceptions to the visual obstruction regulations focus on constructing/maintaining portions of a 6' high open combination steel rod/stone fence with 6' 6" high brick columns, and a steel rod swinging gate in the two 20' visibility triangles on both sides of the north driveway into the site on Alva Court.
- 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 is requesting for special exceptions to the visual obstruction regulations to the required two 20-foot visibility triangles on both sides of the north driveway into the site on Alva Court.
- The applicant submitted site plan and a site plan/elevation indicating portions of a 6' high open combination steel rod/stone fence with 6' 6" high brick columns, and steel rod swinging gate located in the two 20' visibility triangles on both sides of the north driveway into the site on Alva Court.
- 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 portions of a 6' high open combination steel rod/stone fence with 6' 6" high brick columns, and steel rod swinging gate in the two 20' visibility triangles on both sides of the north driveway into the site on Alva Court does not constitute a traffic hazard.

- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in two 20' visibility triangles on both sides of the north driveway into the site on Alva Court to that what is shown on these documents – 6' high open combination steel rod/stone fence with 6' 6" high brick columns, and a steel rod swinging gate.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions 45' visibility triangle):

- This request for special exception to the visual obstruction regulations focuses on locating and maintaining a 6' high open combination steel rod/stone fence with 6' 6" high brick columns in the 45' visibility triangle at the northwest corner of Deloache Avenue and Alva Court on a site that is currently being developed with a single-family home.
- Section 51A-4.602(d) of 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 subject site is zoned R-1 AC (A) which requires a 45-foot visibility triangle at the intersection of two streets.
- A site plan and an elevation have been submitted indicating a 6' high open combination steel rod/stone fence with 6' 6" high brick columns located in the 45' visibility triangle at the intersection of Deloache Avenue and Alva Court.
- 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 this request to locate and maintain a 6' high open combination steel rod/stone fence with 6' 6" high brick columns in the 45' visibility triangle at the intersection of Deloache Avenue and Alva Court does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the item to be located and maintained in the 45' intersection visibility triangle to that what is shown on these documents – a 6' high open combination steel rod/stone fence with 6' 6" high brick columns.

Timeline:

- April 17, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 15, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

- May 17, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th 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.
- June 4, 2018: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator (see Attachment A).
- June 4, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.
- June 7, 2018 The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".
- June 19, 2018: The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action on this application until the next public hearing to be held on August 21, 2018.
- June 19, 2018: The Board Administrator wrote the applicant a letter of the board's action; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 10th deadline to submit additional evidence to be incorporated into the Board's docket materials
- July 13, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment C).

August 7, 2018: 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 Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: August 21, 2018

APPEARING IN FAVOR: Blake Byrd, 1528 Slocum St., Dallas, TX 75207

APPEARING IN OPPOSITION: No One

MOTION 1 of 4: **Sibley**

I move that the Board of Adjustment, in Appeal No. BDA 178-073, on application of Blake Byrd, **grant** the 33-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and 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 result in unnecessary hardship to this applicant.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code, as amended:

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

SECONDED: **Narey**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION 2 of 4:

I move that the Board of Adjustment, in Appeal No. BDA 178-073, on application of Blake Byrd, **grant** the request of this applicant to construct and/or maintain a six-foot six-inch high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, 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, as amended:

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

SECONDED: Narey

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION 3 of 4: Sibley

I move that the Board of Adjustment, in Appeal No. BDA 178-073, on application of Blake Byrd, **grant** the request to maintain items in the visibility triangle at the drive approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, 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, as amended:

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

SECONDED: Narey

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION 4 of 4:

I move that the Board of Adjustment, in Appeal No. BDA 178-073, on application of Blake Byrd, **grant** the request to maintain items in the visibility triangle at the street intersection as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, 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, as amended:

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

MOTION: Narey

I move to adjourn this meeting.

SECONDED: Schulte

AYES: 4 – Schulte, Nelson, Jones, Narey,

NAYS: 1 - Sibley

MOTION PASSED: 4 – 1

1:23 P. M.: Board Meeting adjourned for **August 21, 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.