

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, May 21, 2018**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member, and Matt Shouse, regular member, and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: Ryan Behring, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member, and Matt Shouse, regular member, and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: Ryan Behring, regular member

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Kanesia Williams, Asst. City Atty., Theresa Pham, Asst. City Atty., David Navarez, Project Engineer, Megan Wimer, Asst. Bldg. Official, Olga Torres-Holyoak, Senior Planner, Shombray Irby, Acting Board Secretary and Elaine Hill, Board Secretary

STAFF PRESENT AT HEARING: David Cossum, Director, Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Kanesia Williams, Asst. City Atty., Theresa Pham, Asst. City Atty., David Navarez, Project Engineer, Megan Wimer, Asst. Bldg. Official, Olga Torres-Holyoak, Senior Planner, Shombray Irby, Acting Board Secretary and Elaine Hill, Board Secretary

11:12 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's April 16, 2018 docket.

1:07 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, April 16, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2018

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA178-041(SL)

BUILDING OFFICIAL'S REPORT: Application of Paul Fields, represented by Lisa Ballew, for a special exception to the fence standards regulations at 9422 Alva Court. This property is more fully described as Lot 4, Block 6, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 12 foot 4 inch high fence in a required front yard, which will require a 8 foot 4 inch special exception to the fence standards regulations.

LOCATION: 9422 Alva Court

APPLICANT: Paul Fields
Represented by Lisa Ballew

REQUEST:

A request for a special exception to the fence standards regulations related to height of 8' 4" is made to construct and maintain the following on a site being developed with a single family home:

- an 8' high open wrought iron fence with approximately 9' high columns, and two 8' high entry gates one of which has 12' 4' high entry gate columns parallel to the street; and
- an 8' high open wrought iron fence perpendicular to the street on the north and south sides of the site in the front yard setback.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS:

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.

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single family 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. BDA056-003, Property at 9423 Alva Court (the lot west of 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. BDA967-297, Property at 9434 Alva Court (the lot north of the subject site)

On September 15, 1997, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' 6". 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 an 8' high open steel fence with 8' 6" high stucco-finish columns and an 8' high open metal gate.

GENERAL FACTS/STAFF ANALYSIS:

- The request for a special exception to the fence standards regulations related to height of 8' 4" focuses on constructing and maintaining an 8' high open wrought iron fence with approximately 9' high columns, and two 8' high entry gates one of which has two, 12' 4' high entry gate columns parallel to the street; and an 8' high open wrought iron fence perpendicular to the street on the north and south sides of the site in the front yard setback on a site that is 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 site plan and elevation indicates that the proposal in the site's front yard setback that would reach a maximum height of 12' 4" to account for height of the two entry gate columns.
- The submitted site plan denotes the following:
 - The proposal in the front yard setback is represented as being approximately 170' in length parallel to the street and approximately 31' in length perpendicular to the street on the north and south sides of the site in the front yard setback.
 - The proposal is represented as being located approximately 9' from the front property line, and approximately 22' from the pavement line.
- A single family lot fronts the proposal on the subject site. This lot has a fence in its front yard setback higher than 4' (an approximately 5' high fence) that appears to be a result of a fence standards special exception granted by the Board of Adjustment in 2005: BDA056-003. (See the "Zoning/BDA History" of this case report for details on this request).
- The Board Administrator conducted a field visit of the site and surrounding area on the street from Deloache Avenue on the south to Ravine Drive on the north and noted two other fences that appeared to be over 4' in height and in a front yard setback. One of these fences was located directly north of the site (an approximately 8' high open metal fence that that appears to be a result of a fence standards special exception granted by the Board of Adjustment in 1997: BDA967-297. (See the "Zoning/BDA History" of this case report for details on this request). The other noted fence was an approximately 5' – 6' high open wrought iron fence immediately south of the site with no recorded BDA history.
- As of May 11, 2018, no letters had been submitted in support of the request, 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 regulations related to fence height of 8' 4" 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.

Timeline:

February 22, 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.

April 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- April 10, 2018: The Board Administrator/Chief Planner emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 11th 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.

May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Project Engineer, the Sustainable Development and Construction Department 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: MAY 21, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gambow**

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

BDA 178-041 – Application of Paul Fields represented by Lisa Ballew to construct and maintain and/or maintain a 12-foot four-inch high fence as a special exception to fence standards contained in the Dallas Development Code, as amended, is **granted**, subject to the following condition:

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

SECONDED: **Bartos**

AYES: 5 - Richardson, Gambow, Agnich, Shouse, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-052(SL)

BUILDING OFFICIAL’S REPORT: Application of Jennifer Cohn, represented by Matt Moore, for a special exception to the off-street parking regulations at 13040 Coit Road. This property is more fully described as Lot 6A, Block E/7756 and is zoned MU-1, which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for a restaurant with drive-in or drive-through service use, and provide 37 of the required 48 off-street parking spaces, which will require a 11 space special exception to the off-street parking regulations.

LOCATION: 13040 Coit Road

APPLICANT: Jennifer Cohn
Represented by Matt Moore

REQUEST:

A request for a special exception to the off-street parking regulations of 11 spaces is made to replace an existing “restaurant with drive-in or drive-through service” use/structure with a new “restaurant with drive-in or drive-through service” use/structure (McDonalds), and to provide 37 (or 77 percent) of the 48 required off-street parking spaces on the subject site.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

Section 51A-4.311(a) of the Dallas Development Code states the following with regard to special exception: parking demand:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is

greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 11 spaces shall automatically and immediately terminate if and when the “restaurant with drive-in or drive-through service” use is changed or discontinued.

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the request.

BACKGROUND INFORMATION:

Zoning:

Site: MU-1 (Mixed use)
North: MU-1 (Mixed use)
South: MU-1 (Mixed use)
East: MU-1 (Mixed use)
West: MU-1 (Mixed use)

Land Use:

The subject site is developed with an existing “restaurant with drive-in or drive-through service” use/structure (McDonalds). The areas to the north and south are developed with office uses; the area to the east is developed with hotel use; and the area to the west is developed with retail uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the off-street parking regulations of 11 spaces focuses on replacing an existing approximately 3,200 square foot “restaurant with drive-in or drive-through service” use/structure with a new approximately 4,800 square foot “restaurant with drive-in or drive-through service” use/structure (McDonalds), and providing 37 (or 77 percent) of the 48 required off-street parking spaces on the subject site.
- The Dallas Development Code requires the following off-street parking requirements:
 - Restaurant with drive-in or drive through service: One space per 100 square feet of floor area with a minimum of four spaces.

- On May 9, 2018, the Sustainable Development Department Senior Engineer submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the “restaurant with drive-in or drive-through service” use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 11 spaces (or 23 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 11 spaces shall automatically and immediately terminate if and when the “restaurant with drive-in or drive-through service” use is changed or discontinued, the applicant could construct and maintain an approximately 4,800 square foot “restaurant with drive-in or drive-through service” use/structure and provide 37 (or 77 percent) of the 48 required off-street parking spaces.

Timeline:

February 16, 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.

April 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 10, 2018: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 2nd deadline to submit additional evidence for staff to factor into their analysis; and May 11th 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.”

May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

May 9, 2018: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Has no objections".

BOARD OF ADJUSTMENT ACTION: MAY 21, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gambow**

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

BDA 178-052 – Application of Jennifer Cohn represented by Matt Moore, for a special exception to the off-street parking requirements contained in the Dallas Development Code, as amended, is **granted** subject to the following conditions:

- The special exception of 11 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through services use is changed or discontinued.

SECONDED: **Bartos**

AYES: 5 - Richardson, Gambow, Agnich, Shouse, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-038(SL)

BUILDING OFFICIAL'S REPORT: Application of Aaron Wallrath, represented by Construction Concepts, for special exceptions to the fence standards and visual obstruction regulations at 10515 Lennox Lane. This property is more fully described as Lot 2B, Block G/5534, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet, and requires a 45 foot visibility triangle at street intersections and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain a 5 foot 8 inch high fence in a required front yard, which will require a 1 foot 8 inch special exception to the fence standards regulations, and to locate and maintain items in required visibility triangles at street intersection and driveway approaches, which will require special exceptions to the visual obstruction regulations.

LOCATION: 10515 Lennox Lane

APPLICANT: Aaron Wallrath
Represented by Construction Concepts

REQUESTS:

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

1. Requests for special exceptions to the fence standards regulations related to fence height of 1' 8" are made to construct and maintain a fence higher than 4' in height in the site's Lennox Lane and Isabella Lane 40' front yard setbacks – a 4' 10" high wrought iron fence with 5' 3" high stone columns, and three 5' 8" high open wrought iron gates;
2. Requests for special exceptions to the visual obstruction regulations are made to locate and maintain portions of the aforementioned 4' 10" high open wrought iron fence and 5' 3" high stone columns in two 20' visibility triangles at a driveway into the site on Isabella Lane, and in the 45' visibility triangle at the intersection of Lennox Lane and Isabella Lane.

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 (fence standards regulations):

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 at driveway):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to these requests.
- Staff concluded that these 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 at the driveway into the property from Isabella Lane (4' 10" high wrought iron fence with 5' 3" high stone columns) do not constitute a traffic hazard.

STAFF RECOMMENDATION (visual obstruction special exception at intersection):

Denial

Rationale:

- The Sustainable Development Department Senior Engineer recommends denial of this request.
- Staff concluded that this request for a special exception to the visual obstruction regulations should be denied because the items to be located in this street intersection visibility triangle (4' 10" high wrought iron fence with 5' 3" high stone columns) would constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is 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. BDA167-047, Property located at 10545 Lennox Lane (the property to the north of the subject site)

On April 17, 2017, the Board of Adjustment Panel C granted requests for special exceptions to the fence standards and visual obstruction regulations and imposed the following condition: Compliance with the two submitted site plan/elevations is required.

The case report stated that requests were made to construct and maintain a 6' high wrought iron fence with 6' high solid sliding

wrought iron gates and 6' high columns; an 8' solid wood fence and gate in the site's Isabella Lane front yard setback; the 8' high solid wood fence along Isabella Lane) located on the Isabella Lane front lot line (or less than 5' from this front lot line); and to maintain portions of the aforementioned solid 8' high wood fence in two 20' visibility triangles at a driveway into the site on Lennox Lane.

2. BDA956-177, Property located at 10615 Lennox Lane (two lots north of subject site)

On April 23, 1996, the Board of Adjustment Panel C reversed the decision of the Building Official, denied a request for a variance to the front yard setback regulations without prejudice, and granted a request for a special exception to the fence height regulations of 4' and imposed the following condition: subject to a revised site plan/elevation and a landscape plan. The revised site plan/elevation and landscape plan are to be submitted to the Board Administrator subject to the condition that the height of the fence at the corner of Harry's Lane and Lennox Lane transitions from 6' 6" at that portion parallel along Lennox Lane to 9' at the column located along Harry's Lane approximately 20' west of the northwest corner of Lennox Lane and Harry's Lane.

The case report stated the requests were made to: 1) appeal the Building Official's decision that the portion of the subject site along Harry's lane is a front yard rather than a side yard; 2) maintain portions of an existing fence along Harry's Lane and a proposed fence along Lennox Lane exceed the maximum permitted height for fences in front yards; and 3) maintain a portion of an existing house and an existing fence along Harry's Lane that do not comply with the maximum setbacks and heights for structures and fences in front yards.

3. BDA078-061, Property at 10564 Lennox Lane (two lots northeast of the subject site)

On May 19, 2008, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4'

and imposed the submitted revised site plan and elevation as a condition.

The case report stated the request was made to construct and maintain a 6' high wrought iron fence with 6' 6" high columns and a 5' 7" high entry gate with 8' high stone columns.

4. BDA001-176, Property at 4612 Isabella Lane (the lot west the subject site)

On March 20, 2001, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 2' and imposed the submitted site plan and elevation as a condition.

The case report stated the request was made to construct and maintain a 5' high open metal fence with 5' high masonry columns and 6' high decorative metal gates in the front yard setback on a site that was developed with a single family house.

5. BDA989-216, Property at 4611 Isabella Lane (a lot northwest of the subject site)

On May 17, 1999, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 1' 6" and imposed the submitted site/landscape plan and elevations as a condition.

The case report stated the request was made to construct and maintain a 5' high open metal fence with 5' 6" high stucco columns and 6' high decorative metal gates in the front yard setback on a site that was developed with a single family house.

6. BDA078-053, Property at 10453 Lennox Lane (the lot south of the subject site)

On April 14, 2008, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 6' and imposed the submitted revised site/elevation as a condition.

The case report stated the request was made to construct and maintain a 6' high open metal fence with 6' 6" high stucco columns and two gates (one at 10' in height, the other at 7' in height) in the front yard setback on a site that was developed with a single family house.

7. BDA989-277, Property located at 10522 Lennox Lane (the lot east of subject site)

On August 24, 1999, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4' and imposed the submitted revised site and elevation plan dated June 1999 as a condition.

The case report stated the request was made to construct and maintain a 5' high open metal fence with 6' 3" high brick columns and a 7' 6" high gate with 8' high brick columns.

GENERAL FACTS/STAFF ANALYSIS (fence standards regulations):

- The focus of the two requests for special exceptions to the fence standards regulations are constructing and maintaining a 4' 10" high wrought iron fence with 5' 3" high stone columns, and three 5' 8" high open wrought iron gates in the site's Lennox Lane and Isabella Lane 40' front yard setbacks on the front lot line on a site being developed with a single family home.
- The subject site is zoned R-1ac(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 southwest corner of Lennox Lane and Isabella Lane.
- Given the R-1ac(A) single family zoning and location of the corner lot subject site, it has two 40' front yard setbacks – a front yard setback along Isabella Lane (the shorter of the two frontages of the subject site which is always a front yard in this case) and a front yard setback along Lennox Lane, (the longer of the two frontages which is typically considered a side yard where on this R-1ac(A) zoned property where a 9' high fence could be erected by right). However the site has a front yard setback along Lennox Lane in order to maintain continuity of the established front yard setback along this street frontage where lots to the south of the subject site "fronts" on Lennox Lane.
- The applicant has submitted a site plan and a revised elevation of the proposal in the front yard setbacks with notations indicating that the proposal reaches a maximum height of 5' 8".
- The following additional information was gleaned from the submitted site plan:
 - Along Lennox Lane: the proposal is represented as being approximately 270' in length parallel to the street; located approximately 3' – 12' from the front property line or approximately 22' – 31' from the pavement line; where one single family lot fronts the proposal with a fence higher than 4' in the front yard setback that appears to be a result of fence height special exception granted by the Board in 1999: BDA989-277- an approximately 5' high open metal fence.
 - Along Isabella Lane: the proposal is represented as being approximately 190' in length parallel to the street and approximately 40' perpendicular to the street on the west side of the site in this required front yard; located approximately on the

front property line or approximately 12' from the pavement line; one single family lots fronts the proposal with a fence taller than 4' in the front yard setback that appears to be a result of fence height special exception granted by the Board in 2017: BDA167-047- an approximately 6' high wrought iron fence with 6' high solid sliding wrought iron gates and 6' high columns and an 8' solid wood fence and gate in the site's Isabella Lane front yard setback.

- The Board Administrator conducted a field visit of the site and surrounding area and noted several other fences that appeared to be above 4' in height and located in a front yard setback. Each fence noted appears to be a result of special exceptions granted by the Board of Adjustment. (The "Zoning/BDA History" section of this case report provides details on these neighboring fences).
- As of May 11, 2018, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to fence height will not adversely affect neighboring property.
- Granting these special exceptions to the fence standards related to height of up to 1' 8" with a condition imposed that the applicant complies with the submitted site plan and revised elevation would require the proposal exceeding 4' in height in the front yard setbacks to be located 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 4' 10" high wrought iron fence with 5' 3" high stone columns in two 20' visibility triangles at a driveway into the site on Isabella Lane, and in the 45' visibility triangle at the intersection of Lennox Lane and Isabella Lane.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant submitted a site plan and a revised elevation representing the 4' 10" high open wrought iron fence and 5' 3" high stone columns in two 20' visibility triangles at a driveway into the site on Isabella Lane, and in the 45' visibility triangle at the intersection of Lennox Lane and Isabella Lane.
- The Sustainable Development Department Senior Engineer submitted a review comment sheet with the following comments: "Engineering staff has no objection to the proposed obstruction of visibility triangles at the subject property's driveway; engineering staff recommends denial of the special exception to the visibility triangle at the adjacent street intersection".

- 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 4' 10" high open wrought iron fence and 5' 3" high stone columns in two 20' visibility triangles at a driveway into the site on Isabella Lane, and in the 45' visibility triangle at the intersection of Lennox Lane and Isabella Lane do not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the submitted site plan and revised elevation would require the items in the visibility triangles to be limited to and maintained in the locations, height and materials as shown on these documents – a 4' 10" high wrought iron fence with 5' 3" high stone columns, and three 5' 8" high open wrought iron gates.

Timeline:

- January 19, 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.
- April 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 10, 2018: The Board Administrator/Chief Planner emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 11th 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.
- May 8, 2018: The applicant's representative submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

May 9, 2018: The Sustainable Development Department Senior Engineer submitted a review comment sheet with the following comments: "Engineering staff has no objection to the proposed obstruction of visibility triangles at the subject property's driveway; engineering staff recommends denial of the special exception to the visibility triangle at the adjacent street intersection".

BOARD OF ADJUSTMENT ACTION: MAY 21, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION #1: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 178-038, on application of Aaron Wallrath, represented by Construction Concepts, **grant** the request of this applicant to construct and/or maintain a five-foot eight-inch high fence as a special exception to the height requirement for fences 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 revised elevation is required.

SECONDED: Bartos

AYES: 5 - Richardson, Gambow, Agnich, Shouse, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 178-038, on application of Aaron Wallrath, represented by Construction Concepts, **grant** the request to locate and maintain items in the visibility triangles at the driveway approach as a special exception to the visual obstruction regulation 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 revised elevation is required.

SECONDED: Agnich

AYES: 5 - Richardson, Gambow, Agnich, Shouse, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION #3: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 178-038, on application of Aaron Wallrath, represented by Construction Concepts, **deny** the special exception requested by this applicant to locate and maintain items in the visibility triangles at the street intersection without prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Agnich

AYES: 5 - Richardson, Gambow, Agnich, Shouse, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-056(SL)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin of Baldwin Associates, represented by Rob Baldwin, to appeal the decision of the administrative official at 516 Monte Vista Drive. This property is more fully described as Lot 2 & 3, Block 10/2218, and is zoned CD 6, which requires compliance with the conservation district standards for accessory structures. The applicant proposes to appeal the decision of an administrative official.

LOCATION: 516 Monte Vista Drive

APPLICANT: Rob Baldwin of Baldwin Associates
Represented by Rob Baldwin

REQUEST:

A request is made to appeal the decision of the administrative official on a site developed with a single family home, in this particular application, the document signed by the Building Official and labeled: “Conservation District Denial” Hollywood/Santa Monica Conservation District, with notations of:

- Date applied: 01/24/18;
- Date reviewed 03/22/18;
- Proposed work: Other – requires permit;
- INSTALL INGROUND POOL AND SPA; Permit is required: YES;
- “Work is denied.

1. Pool is defined as an accessory structure per 51A-2.102(2.1) and (135).
2. Per Ordinance 26684(6)(A), accessory structure must be located to the rear of the main building.
3. Provided plan shows pool located to the side of the house.
4. Application is denied to location of pool on the lot.”

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

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

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

BACKGROUND INFORMATION:

Zoning:

Site: CD 6 (Conservation District)
North: CD 6 (Conservation District)
South: CD 6 (Conservation District)
East: CD 6 (Conservation District)
West: CD 6 (Conservation District)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

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

Timeline:

March 21, 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.

April 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 10, 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 May 2nd 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 May 11th 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."

May 3, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Project Engineer, the Sustainable Development and Construction Department 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: APRIL 16 , 2018

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm St. Suite B, Dallas, TX

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

MOTION: Bartos

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. BDA 178-056, on application of Robert Baldwin, 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: Shouse

AYES: 4 - Richardson, Gambow, Shouse, Behring

NAYS: 1- Agnich

MOTION PASSED: 4 – 1

FILE NUMBER: BDA178-080(SL)

BUILDING OFFICIAL’S REPORT: Application of Phillip D. Thompson for a variance to the height regulations at 5230 Alcott Street. This property is more fully described as Lot 15, Block C/1997, and is zoned MF-2(A), which limits the maximum building height to 26 feet due to a residential proximity slope. The applicant proposes to construct and/or maintain a structure with a building height of 36 feet, which will require a 10 foot variance to the height regulations.

LOCATION: 5230 Alcott Street

APPLICANT: Phillip D. Thompson

May 21, 2018 Public Hearing Notes:

- The Board Administrator circulated additional information submitted by the applicant to the Board members at the briefing (see Attachment A).

REQUEST:

A request for a variance to the height regulations (specifically to the residential proximity slope) of up to 10’ is made to complete and maintain a 2 - 3 story duplex structure to a height of 36’ - a height that exceeds the maximum 26’ in height permitted by the residential proximity slope that begins at the single family residentially-zoned property from the south and west zoned R-5(A) by up to 10’.

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:

Denial

Rationale:

- Staff concluded that the applicant had not substantiated how the variance was 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 MF-2(A) zoning district.
- Staff concluded that the characteristics/features of the subject site does not preclude the applicant from developing it commensurate with others in the same zoning district, and in a way that complies with all zoning code provisions including height regulations.

BACKGROUND INFORMATION:

Zoning:

- Site: MF-2(A) (Multifamily district)
- North: PD 462 (Planned Development)
- South: MF-2(A) & R-5(A)(Multifamily and single family districts)
- East: MF-2(A) (Multifamily district)
- West: PD 325 & R-5(A) (Planned Development and single family districts)

Land Use:

The subject site is being developed with a duplex structure. The area to the north is developed with retail uses; and the areas to the east, south, and west are developed with residential uses.

Zoning/BDA History:

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

GENERAL FACTS /STAFF ANALYSIS:

- The request for a variance to the height regulations (specifically to the residential proximity slope) of up to 10' focuses on completing and maintaining a 2- 3 story duplex structure to a height of 36' - a height that exceeds the maximum 26' in height permitted by the residential proximity slope that begins at the single family residentially-zoned property south and west zoned R-5(A) by up to 10'.
- The maximum height for a structure in a MF-2(A) zoning district is 36', however, any portion of a structure over 26' in height cannot be located above a residential proximity slope.
- In this case, given that the subject site is immediately adjacent to single family residentially-zoned property to the north, south, and west, the height of a structure must comply with a 1:3-slope (or 1 foot in height for every 3 feet away from property in an R, R(A), D, D(A), TH, TH(A) residential zoning district).
- The applicant has submitted site plans and elevations that represent a 1:3-slope (or 1 foot in height for every 3 foot away from property in an R(A) residential zoning district on the structure seeking variance.
- The Building Official's Report states that a variance to the height regulations of 10' is requested since a structure is proposed to reach 36 in height or 10' higher/beyond than the 26' height allowed for the structure as it is located on this subject site.
- According to DCAD records, the "main improvement" at 5230 Alcott Street is a structure built in 2017 with 4,500 square feet of living/total area; and with "additional improvements" listed as two attached garages at 552 and 528 square feet.
- The site is flat, somewhat irregular in shape, and according to the application is 0.137 acres (or approximately 6,000 square feet) in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height 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 to height regulations 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 MF-2(A) zoning classification.
 - The variance to height setback regulations 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 MF-2(A) zoning classification.
- If the Board were to grant the request, and impose the submitted site plans and elevations as a condition, the structure the exceeding the height limit or the RPS would be limited to what is shown on these documents – which, in this case, is a structure that would be exceed the height limit/RPS by up to 10'.

Timeline:

April 27, 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.

April 30, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 30, 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 11th 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.”

May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Project Engineer, the Sustainable Development and Construction Department 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: MAY 21, 2018

APPEARING IN FAVOR: Phillip Thompson, 5230 Alcott St., Dallas, TX
Elaine Harper, 5230 Alcott St., Dallas, TX

APPEARING IN OPPOSITION: Alan Rister, 5222 Homer St., Dallas, TX
Cynthia Salzman Mondell, 5215 Homer St., Dallas, TX
Rick Bentley, 5551 Victory Blvd., Dallas, TX
Judy Sullivan, 5217 Homer, Dallas, TX

Ronda Meloth, 5226 Alcott St. Dallas, TX
Francesco Costa, 5218 Alcott St., Dallas, TX

MOTION: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 178-080, on application of Phillip D. Thompson, **deny** the 10-foot variance requested by this applicant without prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant, that it is not a restrictive 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, or is a self-created or personal hardship.

SECONDED: Agnich

AYES: 3 - Richardson, Agnich, Shouse

NAYS: 1 - Bartos

MOTION PASSED: 3 – 1

(NOTE: Gambow did not vote given she left the public hearing at approximately 2:45 p.m).

MOTION: Bartos

I move to adjourn this meeting.

SECONDED: Agnich

AYES: 4 – Richardson, Agnich, Shouse, Bartos

MOTION PASSED: 4 – 0 (unanimously)

3:36 P. M. - Board Meeting adjourned for **May 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.