

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
THURSDAY, February 21, 2019**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, David Naverez, Project Engineer, Phil Erwin, Chief Arborist and Elaine Hill, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, David Naverez, Project Engineer, Phil Erwin, Chief Arborist and Elaine Hill, Board Secretary

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**11:17 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's December 10, 2018 docket.

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**1:13 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.

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel C, December 10, 2018 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: February 21, 2019**

MOTION: None

The minutes were approved without a formal vote.

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**FILE NUMBER:** BDA189-010(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Pryor Blackwell, represented by Mark Fewin, for a special exception to the off-street parking regulations at 6141 Sherry Lane. This property is more fully described as Lot 5, Block 4/5624, and is zoned PD 314, which requires parking to be provided. The applicant proposes to construct and or maintain a structure for a financial institution with drive-through and an office uses, and provide 13 of the required 17 parking spaces, which will require a 4-space special exception to the off-street parking regulations.

**LOCATION:** 6141 Sherry Lane

**APPLICANT:** Pryor Blackwell  
Represented by Mark Fewin of Guidon Real Estate Solutions

**REQUEST:**

A request for a special exception to the off-street parking regulations of 4 spaces is made to replace an existing one-story (according to DCAD) approximately 3,500 square foot “medical office building” constructed in 1958 with a 2-story, approximately 5,700 square foot combination “financial institution with drive-in window” and “office” use/structure, and provide 13 (or 76 percent) of the 17 required off-street parking spaces on the subject site.

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

- 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 4 spaces shall automatically and immediately terminate if and when the “financial institution with drive-in window” and “office” uses are changed or discontinued.

Rationale:

- The Sustainable Development and Construction Senior Engineer indicated that he has no objections to the request.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD 314 (Tract 6) (Planned Development)
- North: PD 314 (Tract 3) (Planned Development)
- South: PD 314 (Tract 6) (Planned Development)
- East: PD 314 (Tract 6) (Planned Development)
- West: PD 314 (Tract 6) (Planned Development)

**Land Use:**

The subject site is developed with an existing one-story office use. The areas to the east and west are developed with retail uses; the area to the north is developed with a parking garage; and the area to the south is developed with what appears to be mostly office uses.

**Zoning/BDA History:**

1. BDA178-113, Property at 6141 Sherry Lane (the subject site)

On October 18, 2018, the Board of Adjustment Panel C denied a request for a variance to the off-street parking regulations of 6 spaces (where 1 off-street parking spaces were required) without prejudice.

The case report stated the request was made to replace an existing one-story (according to DCAD) approximately 3,500 square foot “medical office building” constructed in 1958 with a 2-story, approximately 5,700 square foot combination “financial institution with drive-in window” and “office”

use/structure, and provide 11 (or 64 percent) of the 17 required off-street parking spaces on the subject site.

2. BDA101-046, Property at 6150 Sherry Lane (a lot south of the subject site)

On June 14, 2011, the Board of Adjustment Panel A granted a request for a special exception to the off-street parking regulations of 4 spaces (where 17 off-street parking spaces were required) The board imposed the following condition to this request: The special exception shall automatically and immediately terminate if and when the office use is changed or discontinued.

The case report stated the request was made to construct and maintain a two-story, approximately 5,700 square foot "office" use (Bandera Ventures Headquarters) on a site that is currently undeveloped. The applicant proposed to provide 13 (or 76 percent) of the 17 off-street parking spaces that are required for the proposed approximately 5,700 square foot office use structure.

3. BDA056-052, Property at 6147 Sherry Lane (the lot immediately east of the subject site)

On December 12, 2005, the Board of Adjustment Panel C granted requests for a variance to the off-street parking regulations of 18 spaces (where 32 off-street parking spaces were required) and a special exception to the landscape regulations. The board imposed the submitted revised site plan as a condition to these requests.

The case report stated that requests were made to construct and maintain a two-story retail use (Dee ad Hattie's Specialty Cleaners) with 6,340 square feet on a site that was developed with a vacant one-story retail structure.

### **GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception e to the off-street parking regulations of 4 spaces (or a 24 percent reduction of the off-street parking spaces required) focuses on replacing an existing one-story (according to DCAD) approximately 3,500 square

foot “medical office building” constructed in 1958 with a 2-story, approximately 5,700 square foot combination “financial institution with drive-in window” and “office” use/structure, and providing 13 (or 76 percent) of the 17 required off-street parking spaces on the subject site.

- The Dallas Development Code requires the following off-street parking requirements:
  - Financial institution with drive-in window: One space per 333 square feet of floor area.
  - Office: One space per 333 square feet of floor area
- A site plan has been submitted with this application that denotes a 5,690 square foot 2-story financial institution and office use. This plan denotes that 17 off-street spaces are required and that 13 off-street parking spaces will be provided.
- According to DCAD, the “improvements” for property addressed at 6141 Sherry Lane is a “medical office building” built in 1958 with 3,552 square feet.
- On February 5, 2019, 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 “financial institution with drive-in window” and “office” uses on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 4 spaces (or a 24 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 condition recommended by staff, the applicant could construct and maintain the approximately 5,700 square foot combination “financial institution with drive-in window” and “office” use/structure and provide only 13 (or 76 percent) of the 17 required off-street parking spaces on the subject site.

### **Timeline:**

October 24, 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.

January 7, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

January 7, 2019: 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 January 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and

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

January 31, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

February 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

February 5, 2019: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked “Has no objections”.

**BOARD OF ADJUSTMENT ACTION: February 21, 2019**

**APPEARING IN FAVOR:** Mark Fewin, 5115 McKinney Avenue, #B, Dallas, TX, Thomas Payne, 6147 Sherry Lane, Dallas, TX, Benton Rutledge, 6135 Sherry Lane, Dallas, TX, Pryor Blackwell, 5820 W. Northwest Hwy., Dallas, TX, John DeShazo, 400 S. Houston, Dallas, TX, Chuck DeShazo, 400 S. Houston, #330, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Gambow**

I move that the Board of Adjustment, in Appeal No. BDA 189-010, on application of Pryor Blackwell, represented by Mark Fewin of Guidon Real Estate Solutions, **grant** the request of this applicant to provide 13 off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code, as amended, which require 17 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for financial institution with drive-through and office uses only.

I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of four spaces shall automatically and immediately terminate if and when the financial institution with drive-through or office uses are changed or discontinued.

**SECOND: Bartos**

**AYES: 4 – Richardson, Gambow, Shouse, Bartos**

**NAYS: 1- Agnich**

**MOTION PASSED: 4 – 1**

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**FILE NUMBER: BDA189-018(OA)**

**BUILDING OFFICIAL’S REPORT:** Application of Nick Crawford, represented by Anne Harman, for a special exception to the landscape regulations at 9314 W Jefferson Boulevard. This property is more fully described as Lot 1, Block 1/6113, and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION: 9314 W Jefferson Boulevard**

**APPLICANT: Nick Crawford  
Represented by Anne Harman**

**REQUEST:**

A request for a special exception to the landscape regulations is made to construct and maintain an industrial/research use/structure, and not fully meet the landscape regulations, more specifically, to not meet the site tree requirements on the subject site.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:**

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article;

- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist supports the request given how the history and use of the property create limitations on how the site is renovated for future uses, and in turn restricts some landscaping options. Furthermore, the Chief Arborist recommends approval of the alternate landscape plan on the basis that strict compliance with the full requirements of 51A-10.100 and 51A-10.120 will unreasonably burden the continued use of the industrial property under renovation, and that the exception would not adversely affect neighboring properties.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: IR (Industrial / Research District)  
North: City of Grand Prairie  
South: IR (Industrial / Research District)  
East: IR (Industrial / Research District)  
West: IR (Industrial / Research District)

**Land Use:**

The subject site is being developed with industrial buildings. The areas to the east, south, and west are developed with an industrial center and the area to the north is the City of Grand Prairie.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the landscape regulations focuses on constructing and maintaining an industrial/research use/structure, and not fully meeting the landscape regulations, more specifically, not meeting site tree requirements on the subject site.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than

2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.

- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A).
- The Chief Arborist's memo states the following with regard to "request":
  - The applicant is requesting a special exception to the landscaping regulations of the 1994 Article X ordinance in the Dallas Development Code. The alternative landscape plan will address deficiencies for site trees while attempting to comply with other mandatory requirements and design standards. This case does not address compliance with tree replacement requirements).
- The Chief Arborist's memo states the following with regard to "provision":
  - The large property and the adjacent lots have an extensive history of industrial uses and, as such, include conditions which are heavily regulated to control environmental contaminations. Site trees are provided on the property in locations where they can be readily maintained while providing for the best function of the property. The site has extensive transportation application and other existing conditions which force adjustments for proper plant locations.
  - The property fronts Jefferson Boulevard which is under the jurisdiction of the City of Grand Prairie. Street trees (required to be planted within 30 feet of the curb) are not mandatory for the location. Trees will be placed in the street buffer.
  - The design provides for a street buffer with plant groups and screening of off-street parking.
  - Parking lot tree requirements are met.
- The Chief Arborist's memo states the following with regard to "deficiencies":
  - The design provides for 371 site trees where 1,107 would typically be required.
- The Chief Arborist recommends approval of the alternate landscape plan on the basis that strict compliance with the full requirements of 51A-10.100 and 51A-10.120 will unreasonably burden the continued use of the industrial property under renovation. The exception would not adversely affect neighboring properties.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and
  - The special exception will not adversely affect neighboring properties.
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be provided exception from providing the required site trees on the subject site.

**Timeline:**

November 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.

January 10, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- January 10, 2019: 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 January 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- February 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: The Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- February 7, 2018: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: February 21, 2019**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Shouse**

I move that the Board of Adjustment **grant** the following application **BDA 189-018** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the application satisfy 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:

- Compliance with the submitted alternate landscape plan is required.

SECOND: **Agnich**

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA189-019(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Brett Brodnax, represented by Jason Vander Vorste, for special exceptions to the fence standards regulations at 5014 Lakehill Court. This property is more fully described as Lot 08, Block 1/5544, and is zoned R-1(A), which limits the height of a fence in the front yard to 4 feet, prohibits the use of certain materials for a fence, and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and/or maintain a 9 foot high fence in a required front yard, which will require a 5 foot special exception to the fence standards regulations, and to construct and/or maintain a fence of a prohibited material, which will require a special exception to the fence standards regulations, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations..

**LOCATION:** 5014 Lakehill Court

**APPLICANT:** Brett Brodnax  
Represented by Jason Vander Vorste

**REQUESTS:**

The following requests for special exceptions to the fence standards regulations have been made on a site that is being developed with a single-family home:

1. A request for a special exception to the fence standards regulations related to height of 5’ is made to construct and maintain a fence higher than 4’ in height in the site’s front yard setback – a 6’ high solid iron panel fence, a 5’ 10” pedestrian wood gate with a 6’ 4” stone column, and a 6’ wood/metal gate with 9’ stone columns;
2. A request for a special exception to the fence standards regulations related to fence panels with a surface area that is less than 50 percent open less than 5’ from the front lot line, is made to construct and maintain the aforementioned 6’ high solid iron panel fence located less than 5’ from this front lot line; and
3. A request for a special exception to the fence standards regulations related to prohibited materials is made to maintain a fence of a prohibited fence material (metal gate) – in this case, the aforementioned wood/metal gate.

**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-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:**

There have 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 requests for special exceptions to the fence standards regulations on a site being developed with a single-family home focus on:
  - 1) constructing/maintaining a 6' high solid iron panel fence, a 5' 10" pedestrian wood gate with a 6' 4" stone column, and a 6' wood/metal gate with 9' stone columns located in this front yard setback;
  - 2) constructing/maintaining the aforementioned existing 6' high solid iron panel fence with panels with surface areas that are less than 50 percent open located less than 5' from this front lot line; and,
  - 3) constructing/maintaining the existing fence made of a prohibited fence material (metal gate).
- 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 Dallas Development Code states that no fence panel having less than 50 percent open surface area may be located less than five feet from the front lot line.
- The subject site is zoned R-1ac (A) and has a 40' front yard setback.
- Section 51A-4.602(a)(9) of the Dallas Development Code states that except as provided in this subsection, the following fence materials are prohibited:
  - Sheet metal;
  - Corrugated metal;
  - Fiberglass panels;

- Plywood;
- Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
- Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and
- Barbed wire razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.
- The applicant has submitted a site plan and elevation of the proposal with a fence that reaches up to 9' in height, with fence panels having a surface area that is less than 50 percent open and located less than 5' from this front lot line and of prohibited fence materials (metal gate).
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 115' in length parallel to Lakehill Court.
  - The proposed fence is represented as being located on the front property line, or approximately 16' from the pavement line, and the proposed gate is represented as being located 12' from the front property line, or approximately 28' from the pavement line.
  - The proposal is represented as being approximately 115' in length parallel to Lakehill Court and between 40' to 32' in length perpendicular to the street along this site in the front yard setback.
  - The proposal is represented as a portion (58' in length) of the fence being located on the front property line and the rest of the fence being located between 1' to 12' from the front property line. (The distance between the fence and the pavement line is approximately between 9' 6" to 22').
  - The submitted site plan represents a site that is approximately 44,000 square feet in area where approximately 12' linear feet of prohibited fence material (metal gate) is located on this property.
- The Board Senior Planner conducted a field visit of the site and surrounding area (approximately 400 feet north of the subject site) and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of February 8, 2019, 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 height over 4' in the front yard setback, to fence with panels with surface areas less than 50 percent open less than 5' from the front lot line, and to prohibited fence materials (metal) will not adversely affect neighboring property.
- Granting one and/or all of these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback, with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line, and with prohibited material to be maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

November 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.

January 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 9, 2019: The Sustainable Development and Construction Department Senior Planner, 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 January 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, 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: February 21, 2019**

**APPEARING IN FAVOR:** Jason Vander Vorste, 6644 Rockwood Drive, Tyler, TX,

**APPEARING IN OPPOSITION:** No one

**MOTION: Shouse**

I move that the Board of Adjustment in Appeal No. BDA 189-019 hold this matter under advisement until March 18, 2019.

**SECOND: Agnich**

**AYES:** 5 – Richardson, Agnich, Gambow, Shouse, Bartos

**NAYS:** 0

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA189-024(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Karl Crawley of Masterplan for a variance to the front yard setback regulations and a special exception to the fence standards regulations at 10040 Hollow Way Road. This property is more fully described as Lot 2A, block 1/5517, and is zoned R-1ac(A), which requires a front yard setback of 40 feet, and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a structure and provide a 7-foot 3-inch front yard setback, which will require a 32 foot 9 inch variance to the front yard setback regulations, and to construct and/or maintain a 6 foot 8 inch high fence in a required front yard, which will require a 2 foot 8 inch special exception to the fence standards regulations.

**LOCATION:** 10040 Hollow Way Road

**APPLICANT:** Karl Crawley

**REQUESTS:**

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

1. A variance request to the front yard setback regulations of 32’ 9” is made to construct/maintain a “gate house” structure to be located 7’ 3” from the front property line or 32’ 9” into this 40’ front yard setback; and
2. A request for a special exception to the fence standards regulations related to height of 2’ 8” is made to construct/maintain a fence higher than 4’ in height in the front yard setback (a 6’ high chain-link fence with 6’ 8” high brick columns, two 6’ high metal rolling gates, a 6’ 6’ high metal louvered fence with 6’ 8” high brick columns and a 6’ high pedestrian electronic steel gate).

**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.

**STAFF RECOMMENDATION (front yard variance):**

Denial.

Rationale:

- Staff concluded that the applicant had not substantiated how the variance is necessary to permit development of the subject site that is flat, rectangular in shape, and over 2 acres in area (or twice the area found in most lots in this zoning district) where these features preclude it from being 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.

**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. BDA056-090, Property at 10058 Hollow Way Road (the lot north to the subject site)

On March 14, 2006, the Board of Adjustment Panel A granted requests for a special exception to the fence regulations of 5' 7": 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 8' 4" high open wrought iron fence (atop an approximately 1' 5" limestone base), with 9' 7" high limestone columns in the 40' Hollow Way Road front yard setback.
2. BDA990-297, Property at 10058 Hollow Way Road (the lot north to the subject site)

On June 27, 2000, the Board of Adjustment Panel A denied a request for a special exception to the fence height regulations of 5' 7" with prejudice and denied a special exception to the single-family regulations for an additional dwelling unit without prejudice. The case report states that the fence special exception was requested in conjunction with constructing and maintaining an 8' high combination limestone/wrought iron fence and that the single-family special exception was requested in conjunction with maintaining an approximately 576 square foot, 1-story "guest house"/ dwelling unit.
3. BDA88-009, Property at 10023 Hollow Way Road (The lot southwest to the subject site)

On December 12, 1988, the Board of Adjustment granted a 4' rear yard setback variance and a 1' side yard setback variance to maintain a garage structure located on the south of the property.

### **GENERAL FACTS/STAFF ANALYSIS (front yard variance):**

- The request for a variance to the front yard setback regulations of 32' 9" focuses on constructing and maintaining a "gate house" structure to be located 7' 3" from the front property line or 32' 9" into this 40' front yard setback.
- The subject site is zoned R-1ac (A) which requires a 40' front yard setback.

- The submitted plan represents that a “gate house” structure is proposed to be located as close as 7’ 3” from the site’s front property line or 32’ 9” into the 40’ front yard setback.
- The following additional information was gleaned from the submitted site plan:
  - The gate house structure is represented as being approximately 8’ in length and 10’ in width or approximately 80 square feet in area.
  - The gate house structure is represented as being located approximately 7’ 3” from the property line.
- DCAD records indicate the following improvements for property located at 10040 Hollow Way Road: “main improvement: a structure with 15,100 square feet of living area built in 2017”, and “additional improvements; a 768 square foot attached garage, a 1198 square foot attached garage, a 1,466 square foot attached garage, a 1,289 square foot detached garage and a 1,040 square foot detached quarters”.
- The subject site is flat, rectangular in shape, and according to the application, is 2.142 acres (or approximately 93,300 square feet) in area. The site is zoned R-1 ac (A) where the typical lot size is one area or 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 gate house structure to be located 7’ 3” from the site’s front property line or 32’ 9” 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’ 8” focuses on constructing/maintaining a 6’ high chain-link fence with 6’ 8” high brick columns, two 6’ high metal rolling gates, a 6’ 6” high metal louvered fence with 6’ 8” high brick columns and a 6’ high pedestrian electronic steel gate 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 applicant submitted site plan and a site plan and elevation representing the proposed fences in the front yard setback with notations indicating that the proposal reaches a maximum height of 6' 8".
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 264' in length parallel to Hollow Way Road and approximately 25' perpendicular to Hollow Way Road on the north and south sides of the site in this front yard setback.
  - The proposal is represented as being located approximately 15' from the front property line or approximately 27' 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 Hollow Way Road located in the front yard setbacks, some of which have recorded BDA history (see the Zoning/BDA History section of this case report for details).
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to fence height of 2' 8" will not adversely affect neighboring property.
- As of February 8<sup>th</sup>, 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' 8" 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:**

- December 20, 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.
- January 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- January 9, 2019: 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 January 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 8<sup>th</sup> 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.

January 19, 2019: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report on this application to the Board Administrator (see Attachment A).

February 4, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

February 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, 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: February 21, 2019**

**APPEARING IN FAVOR:** Dallas Cothrum, 900 Jackson, Dalla, TX

**APPEARING IN OPPOSITION:** No one

**#1 MOTION 1 of 2: Shouse**

I move that the Board of Adjustment, in Appeal No. BDA 189-024, on application of Karl Crawley of Masterplan, **grant** the 32-foot 9-inch 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:

- Compliance with the submitted site plan is required.

**SECOND: Bartos**

**AYES:** 3 –Gambow, Shouse, Bartos

**NAYS:** 2 - Agnich, Richardson

**MOTION FAILED:** 3 – 2

#2 MOTION 1 of 2: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 189-024, on application of Karl Crawley of Masterplan, **deny** the variance to the front yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

SECOND: Agnich

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

NAYS: 0

MOTION PASSED: 5 – 0 (Unanimously)

MOTION 2 of 2: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 189-024, on application of Karl Crawley of Masterplan, **grant** the request of this applicant to construct and/or maintain a six-foot eight-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:

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

SECOND: Bartos

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

NAYS: 0

MOTION PASSED: 5 – 0 (Unanimously)

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The meeting was adjourned at 3:25 p.m. on February 21, 2019.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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