

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
TUESDAY, MARCH 21, 2017**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, vice-chair, Michael Gibson, regular member, Renee Dutia, regular member, Gary Sibley, alternate member and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: Elizabeth Nelson, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Engineering Asst. Director, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Peter Schulte, vice-chair, Michael Gibson, regular member, Renee Dutia, regular member, Gary Sibley, alternate member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: Elizabeth Nelson, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Engineering Asst. Director, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

11:20 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 21, 2017** docket.

1:18 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel February 21, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2017

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA167-013(SL)

BUILDING OFFICIAL'S REPORT: Application of Nathaniel Mangum for special exceptions to the fence standards and visual obstruction regulations at 5314 Yolanda Lane. This property is more fully described as Lot 7, Block E/5518, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain a 7 foot 2 inch high fence in a required front yard, which will require a 3 foot 2 inch special exception to the fence standards, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5314 Yolanda Lane

APPLICANT: Nathaniel Mangum

REQUESTS:

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

1. A request for a special exception to the fence standards of up to 3' 2" is made to maintain a fence (a 5' 7" high open metal picket fence with 5' 7" high posts, and two arched open metal picket gates ranging in height from 5' 7" to 7' 2") higher than 4' in height in the site's required front yard.
2. Requests for special exceptions to the visual obstruction regulations are made to maintain portions of the aforementioned open metal picket fence in four 20' visibility triangles at the two driveways into the site.

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:

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):

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):

Denial

Rationale:

- Staff concurred with the Sustainable Development Department Assistant Director of Engineering who recommends that these requests be denied.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be denied because the applicant had not substantiated how the existing 5' 7" high open metal picket fence with 5' 7" high posts in four 20' visibility triangles at the two driveways into the site from the street do not 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 developed with a single family home. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- This request for a special exception to the fence standards focuses on maintaining a 5' 7" high open metal picket fence with 5' 7" high posts, and two arched open metal

picket gates ranging in height from 5' 7" to 7' 2" on a site developed with a single family home.

- The subject site is zoned R-1ac(A). While R-1ac(A) zoning requires a 40' front yard setback, the subject site has a 65' required front yard because of a platted building line.
- 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 has submitted a site plan and an elevation of the proposal/existing fence in the front yard setback with notations indicating that the proposal reaches a maximum height of 7' 2".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 200' in length parallel to the street and approximately 65' perpendicular to the street on the east and west sides of the site in the required front yard.
 - The fence proposal is represented as being located approximately on the front property line or approximately 15' from the pavement line.
- One single family lot fronts the existing fence, a lot that has no fence in the front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area approximately 300 feet east and west of the site and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of March 10, 2017, no letters have been submitted in support of the request, and 11 letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence standards of 3' 2" will not adversely affect neighboring property.
- Granting this special exception of 3' 2" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal/existing fence exceeding 4' in height in the front yard setback to be 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 maintaining portions of a 5' 7" high open metal picket fence with 5' 7" high posts in four 20' visibility triangles at the two driveways into the site.
- 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 an elevation representing a 5' 7" high open metal picket fence in the four, 20' visibility triangles at the two driveways into the site.
- The Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet along with a photo (see Attachment A). The review comment sheet was marked "Recommends that this be denied" with the following additional comment: "The fence and gate create a public traffic hazard".
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain portions of a 5' 7" high open metal picket fence located in four 20' visibility triangles at the two driveways into the site do not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the submitted site plan and 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.

Timeline:

November 22, 2016: 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 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 6, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 1st deadline to submit additional evidence for staff to factor into their analysis; and the February 10th 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.

February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

February 10, 2017: The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet along with a photo (see Attachment A). The review comment sheet was marked "Recommends that this be denied" with the following additional comment: "The fence and gate create a public traffic hazard".

February 21, 2017: The Board of Adjustment Panel A conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on March 21, 2017.

February 23, 2017: The Board Administrator emailed the applicant the board's action; the February 1st deadline to submit additional evidence for staff to factor into their analysis; and the February 10th deadline to submit additional evidence to be incorporated into the Board's docket materials. (Note that the applicant has not submitted any additional documents from what was presented before/at the February 21st public hearing).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Nathaniel Mangum, 5314 Yolanda Lane, Dallas, TX
Lindsay Mangum, 5314 Yolanda Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Nelson**

I move that the Board of Adjustment in Appeal No. **BDA 167-013(SL)** hold this matter under advisement until **March 21, 2017**.

SECONDED: **Sibley**

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2017

APPEARING IN FAVOR: Lindsay Mangum, 5314 Yolanda Lane, Dallas, TX

APPEARING IN OPPOSITION: Joe Siegel, 5515 Yolanda Lane, Dallas, TX

MOTION #1: **Sibley**

I move that the Board of Adjustment, in Appeal No. **BDA 167-013(SL)**, on application of Nathaniel Mangum, **grant** the request of this applicant to construct and/or maintain a seven-foot two-inch high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect

neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Agnich

AYES: 5 – Schulte, Gibson, Dutia, Sibley, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA 167-013(SL)**, on application of Nathaniel Mangum, **deny** the visibility obstruction special exceptions requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Gibson

AYES: 5 – Schulte, Gibson, Dutia, Sibley, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-020(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Reeves, represented by Robert Reeves and Associates, Inc., for a special exception to the landscape regulations at 100 Crescent Court. This property is more fully described as Lot 1A, Block 2/948, and is zoned PD-193 (HC), 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: 100 Crescent Court

APPLICANT: Robert Reeves
Represented by Robert Reeves and Associates, Inc.

REQUEST:

A special exception to the landscape regulations is made to amend certain features shown on an alternate landscape plan (including but not limited to constructing and maintaining two patio areas to the mixed use development) that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on August 16, 2016: BDA156-076 on the site currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent).

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

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan dated 02-27-2017 is required.

Rationale:

- The City of Dallas Chief Arborist supports the applicant's request in that the features shown on the submitted revised landscape plan meet the spirit and intent of the PD 193 landscape requirements.

BACKGROUND INFORMATION:

Site: PD 193(HC) (Planned Development, Heavy Commercial)
North: PD 193(HC) (Planned Development, Heavy Commercial)
South: PD 193 (PDS 334) (Planned Development, Planned Development)
East: PD 193(PDS 64) (Planned Development, Planned Development)
West: PD 193(PDS 74) (Planned Development, Planned Development)

Land Use:

The subject site is developed with a mixed use development (The Crescent). The areas to the north, east, south, and west are developed with a mix of land uses.

Zoning/BDA History:

1. BDA156-076, Property at 100, Crescent Court (the subject site) On August 16, 2016, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the following conditions: 1) compliance with the submitted alternate landscape plan is required; and 2) All landscape improvements in each landscape area on the property as shown on the submitted revised landscape plan must be completed within 18 months of Board action, and landscape improvements for areas B and D as shown on the submitted landscape plan must be completed before

the final building inspections of each permit in areas B and D, respectively.

The case report stated the request was made to amend certain features shown on an alternate landscape plan that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on March 17, 2015: BDA145-037. The subject site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent). Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on November 15, 2016).

2. BDA145-037, Property at 100, Crescent Court (the subject site)

On March 17, 2015, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition.

The case report stated the request was made to replace an existing drive-through bank facility with an approximately 3,000 square foot restaurant, and not fully providing required landscaping on a site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent) (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on June 28, 2016).

3. BDA 134-042, Property at 100, Crescent Court (the subject site)

On June 24, 2014, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition.

The case report stated the request was made to construct and maintain an approximately 1,400 square foot addition to an approximately 1,450,000 square foot mixed use development (The Crescent), and not fully providing required landscaping. (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new

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| 4. BDA 81-239A, Property at 100, 200, 300, 400, and 500 Crescent Court (the subject site) | application on this site on January 20, 2015). On February 14, 1988, the Board of Adjustment granted a request for “a 599 parking space variance and eliminate the set-aside land provisions subject to a TMP program as per the memo from Ken Melston, Manager of Transportation Engineering Services. |
| 5. BDA 81-239, 239, Property at 2304 Cedar Springs Road (the subject site) | On October 13, 1981, the Board of Adjustment granted a 599 parking space variance, subject to a parking study to be conducted approximately one year after initial completion of the project |

GENERAL FACTS/ STAFF ANALYSIS:

- This request for a special exception to the landscape regulations focuses on amending certain features shown on an alternate landscape plan (including but not limited to constructing and maintaining two patio areas within the mixed use development) that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on August 16, 2016: BDA156-076 on the site currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent).
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- On February 9th, the applicant submitted a letter to staff (see Attachment B) requesting a delay of this request until the Board of Adjustment Panel A March 21st public hearing to allow additional time to create a revised alternate landscape plan that would represent a new patio for a restaurant use which may have an impact on trees proposed and conveyed on the revised alternate landscape plan that was submitted on February 1st.
- On February 10, 2017, the City of Dallas Chief Arborist submitted a memo with regard to this application (see Attachment C). This memo stated the following:
 - The Chief Arborist supports the proposed revisions to the alternate landscape plan for 100 Crescent Court which was submitted for the February hearing. The revisions sustain a plan which does not violate the spirit and intent of the ordinance.
 - However, based on the applicant’s statement of February 9, there may yet be additional revisions to the alternate landscape plan based on proposed future additions on a building site which is undergoing a period of general modification.

Any additional revisions to the landscape plan should be completed before permits are submitted for the future addition.

- The ordinance requires that any change to floor area, and net increase of impervious surfaces, will require future landscape compliance under this ordinance. The applicant has successfully attempted to report all new adjustments or errors to be updated on the revised alternate landscape plans to date. The arborist office only requests the most efficient means to have a complete landscape plan for the purpose of permitting.
- The Chief Arborist will support the applicant, staff, and the board to help achieve the appropriate outcome.
- On February 28, 2017, the applicant submitted additional documentation that included a revised alternate landscape plan (see Attachment D).
- On March 9, 2017, the City of Dallas Chief Arborist submitted a memo with regard to this application (see Attachment E). This memo stated the following:
 - The Chief Arborist supports the additional proposed revisions (shown in Attachment D) to the alternate landscape plan for 100 Crescent Court which was submitted for the February hearing. The revisions sustain a plan which does not violate the spirit and intent of the ordinance. Three oak trees will be removed and four birch trees will be placed back on the property. The removal and modification is acceptable for the use on the property.
 - The ordinance requires that any change to floor area, and net increase of impervious surfaces, will require future landscape compliance under this ordinance. The applicant has successfully attempted to report all new adjustments or errors to be updated on the revised alternate landscape plans to date. His diligence on following up on a transitioning property such as 100 Crescent Court is appreciated. .
- The applicant has the burden of proof in establishing that the special exception will not compromise the spirit and intent of Section 51P-193-126: "Landscape, streetscape, screening, and fencing standards".
- If the Board were to grant this request and impose the submitted alternate landscape plan dated 02-27-2017 as a condition, the site would be granted exception from full compliance to the landscape requirements of the Oak Lawn PD 193 landscape ordinance.

Timeline:

December 15, 2016: 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 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

- January 6, 2017: The Board Administrator emailed the following information to the applicant:
- 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 February 1st deadline to submit additional evidence for staff to factor into their analysis; and the February 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- February 1, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- February 9, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).
- February 10, 2017: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment C).
- February 23, 2017: The Board Administrator emailed the applicant the board's action; the February 1st deadline to submit additional evidence for staff to factor into their analysis; and the February 10th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- February 28, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment D).

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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.

March 9, 2017: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment E).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., #160, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Dutia**

I move that the Board of Adjustment in Appeal No. **BDA 167-020(SL)** hold this matter under advisement until **March 21, 2017**.

SECONDED: **Nelson**

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Dutia**

I move to grant that the Board of Adjustment grant application **BDA 167-020(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Agnich

AYES: 5 – Schulte, Gibson, Dutia, Sibley, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-029(SL)

BUILDING OFFICIAL'S REPORT: Application of Rosemary Papa, represented by Misty Ventura of Shupe Ventura, PLLC, for a variance to the height regulations at 13439 Preston Road. This property is more fully described as a 3.35 acre tract in Lot 3, Block A/7409, and is zoned PD 887 (Subdistrict 1), which limits the maximum story height to 15 feet. The applicant proposes to construct and maintain a structure with a story height of 32 feet, which will require a 17 foot variance to the height regulations.

LOCATION: 13439 Preston Road

APPLICANT: Rosemary Papa
Represented by Misty Ventura of Shupe Ventura, PLLC

REQUEST:

A request for a variance to the height regulations (specifically to story height) of up to 17' is made to construct and maintain a 4-story fitness facility structure where the proposed 2nd, 3rd, and 4th floors have stories at 20', 32', and 22' in height, respectively, and exceed the maximum story height of 15' required in PD 887 Subdistrict 1 by as much as 17' on a site that is currently developed with a combination of surface parking and retail use that the applicant intends to demolish.

STANDARD FOR A VARIANCE:

The Dallas Development Code Section 51A-3.102(d)(10) 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 variance should be denied because there was no property hardship to the site that warranted a variance to the height regulations. The applicant had not demonstrated how the features of the flat, rectangular in shape, and 3.35 acre site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 887 zoning classification while complying with code provisions including height regulations.

BACKGROUND INFORMATION:

Zoning:

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|---------------|------------------------------|
| <u>Site:</u> | PD 887 (Planned Development) |
| <u>North:</u> | PD 887 (Planned Development) |
| <u>South:</u> | PD 887 (Planned Development) |
| <u>East:</u> | PD 17 (Planned Development) |
| <u>West:</u> | PD 887 (Planned Development) |

Land Use:

The subject site is developed with a combination of surface parking and retail use that the applicant intends to demolish. The areas to the north east, south, and west are developed with nonresidential uses.

Zoning/BDA History:

1. Z123-186, Property located generally east of the Dallas North Tollway, south of Southern Boulevard, south of Monfort Place, south of the northern boundary of Woodchase Apartments, south of the northern boundary of Preston View Estates, west of Preston Road, and north of Interstate Highway 635 (LBJ Freeway). (Property that includes the subject site).

On June 12, 2013, the City Council created an ordinance changing the zoning on property that had been zoned PD 130, PD 215, PD 250, PD 279, PD 322, PE 423, PD 713, CR, CS, GO(A), RR, LO-2, MO-2, MF-1(A), MF-4(A), MU-1, MU-2, MU-3, and P(A) to PD 887.

2. BDA167-030, Property located at 13131 Preston Road (property west of the subject site)

On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to story height) of up to 25' made to construct and maintain a 2-story theater structure where the proposed 2nd floor is 40' in height and exceeds the maximum story height of 15' required in PD 887 Subdistrict 1B by 25'.

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| <p>3. BDA167-031, Property located at 13131 Preston Road (property west of the subject site)</p> | <p>On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to the minimum number of stories required by PD 887) of 1 story is made to construct and maintain a 2-story theater structure, a structure that is 1-story less than the 3 stories required on properties in PD 887 (Subdistrict 1B).</p> |
| <p>4. BDA167-032, Property located at 13131 Preston Road (property west of the subject site)</p> | <p>On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to story height) of up to 15' is made to construct and maintain a 10-story hotel structure where the proposed 5th floor is 30' in height and exceeds the maximum story height of 15' required in PD 887 Subdistrict 1B by 15'.</p> |

GENERAL FACTS /STAFF ANALYSIS:

- The request for a variance to the height regulations (specifically to story height) of up to 17' focuses on constructing and maintaining a 4-story fitness facility structure where the proposed 2nd, 3rd, and 4th floors have stories at 20', 32', and 22' in height, respectively exceed the maximum story height of 15' required in PD 887 Subdistrict 1 by as much as 17' on a site that is currently developed with a combination of surface parking and retail use that the applicant intends to demolish.
- The subject site is zoned PD 887 (Subdistrict 1). PD 887 provides the following related to "stories":
 1. Minimum number of stories above grade is two. The minimum height provisions of Section 51A-13.302(b)(2), (3), (4), and (5) also apply.
 2. Maximum number of stories above grade is 12.
- Section 51A-13.304(a)(4) provides regulations for MU District Type specifically stating the ground story height is a minimum/maximum of 15'/30' and the upper story height is a minimum/maximum of 10'/15'.
- The applicant has submitted an elevation of the proposed fitness center structure detailing the height of all four floors/stories. The elevation denotes the 1st floor/story to meet the height requirement; the 2nd floor story to be 20' (or 5' over the maximum story height); the 3rd floor/story to be 32' (or 17' over the maximum story height); and the 4th floor/story to be 22' (or 7' over the maximum story height).
- The site is flat, rectangular in shape, and according to the application is 3.35 acres 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 PD 887 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 PD 887 zoning classification.
- If the Board were to grant the request for a variance to the height regulations, a determination should be made if any conditions should be imposed with this request (i.e. submitted site plan and/or elevation).

Timeline:

January 26, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 15, 2017: 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 March 1st deadline to submit additional evidence for staff to factor into their analysis; and the March 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 6, 2017: The applicant’s representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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: MARCH 21, 2017

APPEARING IN FAVOR: Misty Ventura, 9406 Biscayne, Dallas, TX
Jeffrey Melby, 2902 Corporate Place, Chanhassen, MN
Matt Bach, 15746 Conewood Cir, Dallas, TX
Dianne Curry, 5939 Encore D, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA 167-029(SL)**, on application of Rosemary Papa, represented by Misty Ventura, **deny** the 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, and 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.

SECONDED: No one

*Motion Failed for Lack of a Second.

MOTION #2: Sibley

I move that the Board of Adjustment, in Appeal No. **BDA 167-029(SL)**, on application of Rosemary Papa, represented by Misty Ventura, **grant** the request of this applicant for a variance to the story height requirements contained in PD 887, 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.

SECONDED: Gibson

AYES: 3 –Gibson, Dutia, Sibley,

NAYS: 2 – Schulte, Agnich

MOTION FAILED: 3 – 2

MOTION #3: Sibley

I move that the Board of Adjustment, in Appeal No. **BDA 167-029(SL)**, on application of Rosemary Papa, represented by Misty Ventura, **deny** the 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.

SECONDED: Agnich

AYES: 4 –Gibson, Dutia, Sibley, Agnich

NAYS: 1 – Schulte

MOTION PASSED: 4 – 1

FILE NUMBER: BDA167-030(SL)

BUILDING OFFICIAL’S REPORT: Application of Rosemary Papa, represented by Misty Ventura of Shupe Ventura, PLLC, for a variance to the height regulations at 13131 Preston Road. This property is more fully described as a 2.964 acre tract in Lot 3, Block A/7409, and is zoned PD 887 (Subdistrict 1B), which limits the maximum story height to 15 feet. The applicant proposes to construct and maintain a structure with a story height of 40 feet, which will require a 25 foot variance to the height regulations.

LOCATION: 13131 Preston Road

APPLICANT: Rosemary Papa
Represented by Misty Ventura of Shupe Ventura, PLLC

REQUEST:

A request for a variance to the height regulations (specifically to story height) of up to 25’ is made to construct and maintain a 2-story theater structure where the proposed 2nd floor is 40’ in height and exceeds the maximum story height of 15’ required in PD 887 Subdistrict 1B by 25’ on a site that is currently developed with a combination of surface parking and retail use that the applicant intends to demolish.

Note that the applicant has filed another request on this property that will be heard by Board of Adjustment Panel A on March 21st: BDA167-031 - a request for a variance to the height regulations (specifically to the minimum number of stories required by PD 887) of 1 story to construct and maintain the 2-story theater structure, a structure that is 1-story less than the 3 stories required on properties in PD 887 (Subdistrict 1B).

On March 6, 2017, the applicant’s representative emailed the Board Administrator requesting that that both applications be presented at the same time since they are related, and that if that is not possible, the first case heard should be for the upper story height increase (BDA 167-030), and if that variance is not granted, then the applicant would likely withdraw Case BDA 167-031.

STANDARD FOR A VARIANCE:

The Dallas Development Code Section 51A-3.102(d)(10) 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 variance should be denied because there was no property hardship to the site that warranted a variance to the height regulations. The applicant had not demonstrated how the features of the flat, somewhat irregular in shape, approximately 3 acre site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 887 zoning classification while complying with code provisions including height regulations.

BACKGROUND INFORMATION:

Zoning:

Site: PD 887 (Planned Development)
North: PD 887 (Planned Development)
South: PD 887 (Planned Development)
East: PD 887 (Planned Development)
West: PD 887 (Planned Development)

Land Use:

The subject site is developed with a combination of surface parking and retail use that the applicant intends to demolish.. The areas to the north east, south, and west are developed with nonresidential uses.

Zoning/BDA History:

1. Z123-186, Property located generally east of the Dallas North Tollway, south of Southern Boulevard, south of Monfort Place, south of the northern boundary of Woodchase Apartments, south of the northern boundary of Preston View Estates, west of Preston Road, and north of Interstate Highway 635 (LBJ Freeway). (Property that includes the subject site).

On June 12, 2013, the City Council created an ordinance changing the zoning on property that had been zoned PD 130, PD 215, PD 250, PD 279, PD 322, PE 423, PD 713, CR, CS, GO(A), RR, LO-2, MO-2, MF-1(A), MF-4(A), MU-1, MU-2, MU-3, and P(A) to PD 887.

2. BDA167-029, Property located at 13439 Preston Road (property east of the subject site)

On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to story height) to construct and maintain a 4-story fitness facility structure where the proposed 2nd, 3rd, and 4th floors have stories at 20', 32', and 22' in height, respectively, and exceed the maximum story height of 15' required in PD 887 Subdistrict 1.

3. BDA167-031, Property located at 13131 Preston Road (the subject site)

On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to the minimum number of stories required by PD 887) of 1 story is made to construct and maintain a 2-story theater structure, a structure that is 1-story less than the 3 stories required on properties in PD 887 (Subdistrict 1B).

4. BDA167-032, Property located at 13131 Preston Road (property east of the subject site)

On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to story height) of up to 15' is made to construct and maintain a 10-story hotel structure where the proposed 5th floor is 30' in height and exceeds the maximum story height of 15' required in PD 887 Subdistrict 1B by 15'.

GENERAL FACTS /STAFF ANALYSIS:

- The request for a variance to the height regulations of (specifically to story height) of 25' focuses on constructing and maintaining a 2-story theater structure where the proposed 2nd floor is 40' in height and exceeds the maximum story height of 15'

required in PD 887 Subdistrict 1B by 25' on a site that is currently developed with a combination of surface parking and retail use that the applicant intends to demolish.

- The subject site is zoned PD 887 (Subdistrict 1B). PD 887 provides the following related to “stories”:
 1. Except as provided in this paragraph, minimum number of stories above grade is three. Minimum number of stories above grade for general commercial development types is two. Structures constructed in an esplanade within Street Section Type B1 of the Street Plans may not exceed one story. The minimum height provisions of Section 51A-13.302(b)(2), (3), (4), and (5) also apply.
 2. Maximum number of stories above grade is 20.
- Section 51A-13.304(a)(4) provides regulations for MU District Type specifically stating the ground story height is a minimum/maximum of 15'/30' and the upper story height is a minimum/maximum of 10'/15'.
- The applicant has submitted an elevation of the proposed 2-story theater structure detailing the height of its two stories. The elevation denotes the 1st floor/story to meet the height requirement; and the 2nd floor story to be 40' (or 25' over the maximum story height).
- The site is flat, somewhat irregular in shape, and according to the application is 2.964 acres 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 PD 887 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 PD 887 zoning classification.
- If the Board were to grant the request for a variance to the height regulations, a determination should be made if any conditions should be imposed with this request (i.e. submitted site plan and/or elevation).

Timeline:

January 26, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 15, 2017: 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 March 1st deadline to submit additional evidence for staff to factor into their analysis; and the March 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 6, 2017: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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: MARCH 21, 2017

APPEARING IN FAVOR: Misty Ventura, 9406 Biscayne, Dallas, TX
Scott Beck, 6622 Aberdeen Ave., Dallas, TX
Carol Short, 10707 Preston Rd., Dallas, TX
Richard Gundy, 14304 Hughes Lane, Dallas, TX
Caroline Perel, 3125 Caruth Blvd., Dallas, TX

APPEARING IN OPPOSITION: No one

3:14 P.M.: Executive Session
3:22 P.M.: Public Hearing Resumes

MOTION #1: Sibley

I move that the Board of Adjustment, in Appeal No. **BDA 167-030**, on application of Rosemary Papa, represented by Misty Ventura, **grant** the request of this applicant for a variance to the story height requirements contained in PD 887, 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.

SECONDED: Gibson

AYES: 1 – Sibley

NAYS: 4 - Schulte, Gibson, Dutia, Agnich

MOTION FAILED: 1 – 4

MOTION #2: Schulte

I move that the Board of Adjustment, in Appeal No. **BDA 167-030**, on application of Rosemary Papa, represented by Misty Ventura, **deny** the 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, and 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.

SECONDED: Gibson

AYES: 4 – Schulte, Gibson, Dutia, Agnich

NAYS: 1 - Sibley

MOTION PASSED: 4 – 1

FILE NUMBER: BDA167-031(SL)

BUILDING OFFICIAL’S REPORT: Application of Rosemary Papa, represented by Misty Ventura of Shupe Ventura, PLLC, for a variance to the height regulations at 13131 Preston Road. This property is more fully described as a 2.964 acre tract in Lot 3, Block A/7409, and is zoned PD 887 (Subdistrict 1B), which requires a minimum number of three stories. The applicant proposes to construct and maintain a structure with two stories, which will require a one story variance to the height regulations.

LOCATION: 13131 Preston Road

APPLICANT: Rosemary Papa
Represented by Misty Ventura of Shupe Ventura, PLLC

REQUEST:

A request for a variance to the height regulations (specifically to the minimum number of stories required by PD 887) of 1 story is made to construct and maintain a 2-story theater structure, a structure that is 1-story less than the 3 stories required on properties in PD 887 (Subdistrict 1B) on a site that is currently developed with a combination of surface parking and retail use that the applicant intends to demolish.

Note that the applicant has filed another request on this property that will be heard by Board of Adjustment Panel A on March 21st: BDA167-030 - a request for a variance to the height regulations (specifically to story height) of up to 25' to construct and maintain a 2-story theater structure where the proposed 2nd floor is 40' in height and exceeds the maximum story height of 15' required in PD 887 Subdistrict 1B by 25').

On March 6, 2017, the applicant's representative emailed the Board Administrator requesting that that both applications be presented at the same time since they are related, and that if that is not possible, the first case heard should be for the upper story height increase (BDA 167-030), and if that variance is not granted, then the applicant would likely withdraw Case BDA 167-031.

STANDARD FOR A VARIANCE:

The Dallas Development Code Section 51A-3.102(d)(10) 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 variance should be denied because there was no property hardship to the site that warranted a variance to the height regulations. The applicant had not demonstrated how the features of the flat, somewhat irregular in shape, approximately 3 acre site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 887 zoning classification while complying with code provisions including height regulations.

BACKGROUND INFORMATION:

Zoning:

Site: PD 887 (Planned Development)

North: PD 887 (Planned Development)
South: PD 887 (Planned Development)
East: PD 887 (Planned Development)
West: PD 887 (Planned Development)

Land Use:

The subject site is developed with a combination of surface parking and retail use that the applicant intends to demolish. The areas to the north east, south, and west are developed with nonresidential uses.

Zoning/BDA History:

1. Z123-186, Property located generally east of the Dallas North Tollway, south of Southern Boulevard, south of Monfort Place, south of the northern boundary of Woodchase Apartments, south of the northern boundary of Preston View Estates, west of Preston Road, and north of Interstate Highway 635 (LBJ Freeway). (Property that includes the subject site).

On June 12, 2013, the City Council created an ordinance changing the zoning on property that had been zoned PD 130, PD 215, PD 250, PD 279, PD 322, PE 423, PD 713, CR, CS, GO(A), RR, LO-2, MO-2, MF-1(A), MF-4(A), MU-1, MU-2, MU-3, and P(A) to PD 887.
2. BDA167-030, Property located at 13131 Preston Road (the subject site)

On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to story height) of up to 25' made to construct and maintain a 2-story theater structure where the proposed 2nd floor is 40' in height and exceeds the maximum story height of 15' required in PD 887 Subdistrict 1B by 25'.
3. BDA167-029, Property located at 13149 Preston Road (property east of the subject site)

On March 21, 2017, the Board of Adjustment Panel will consider a request for a variance to the height regulations (specifically to story height) to construct and maintain a 4-story fitness facility structure where the proposed 2nd, 3rd, and 4th floors have stories at 20', 32', and 22' in height, respectively, and exceed the maximum story height of 15' required in PD 887 Subdistrict 1.

4. BDA167-032, Property located at 13131 Preston Road (property east of the subject site)

On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to story height) of up to 15' is made to construct and maintain a 10-story hotel structure where the proposed 5th floor is 30' in height and exceeds the maximum story height of 15' required in PD 887 Subdistrict 1B by 15'.

GENERAL FACTS /STAFF ANALYSIS:

- The request for a variance to the height regulations (specifically to the minimum number of stories required by PD 887) of 1 story focuses on constructing and maintaining a 2-story theater structure, a structure that is 1-story less than the 3 stories required on properties in PD 887 (Subdistrict 1B) on a site that is currently developed with a combination of surface parking and retail use that the applicant intends to demolish.
- The subject site is zoned PD 887 (Subdistrict 1B). PD 887 provides the following related to “stories”:
 - (A) Except as provided in this paragraph, minimum number of stories above grade is three. Minimum number of stories above grade for general commercial development types is two. Structures constructed in an esplanade within Street Section Type B1 of the Street Plans may not exceed one story. The minimum height provisions of Section 51A-13.302(b)(2), (3), (4), and (5) also apply.
 - (B) Maximum number of stories above grade is 20.
- The applicant has submitted an elevation of the proposed 2-story theater structure detailing that is proposed to be 2 stories.
- The site is flat, somewhat irregular in shape, and according to the application is 2.964 acres 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 PD 887 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 PD 887 zoning classification.
- If the Board were to grant the request for a variance to the height regulations, a determination should be made if any conditions should be imposed with this request (i.e. submitted site plan and/or elevation).

Timeline:

January 26, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 15, 2017: 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 March 1st deadline to submit additional evidence for staff to factor into their analysis; and the March 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 6, 2017: The applicant’s representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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: MARCH 21, 2017

APPEARING IN FAVOR: Misty Ventura, 9406 Biscayne, Dallas, TX
Scott Beck, 6622 Aberdeen Ave., Dallas, TX
Carol Short, 10707 Preston Rd., Dallas, TX
Richard Gundy, 14304 Hughes Lane, Dallas, TX
Caroline Perel, 3125 Caruth Blvd., Dallas, TX

APPEARING IN OPPOSITION: No one

3:14 P.M.: Executive Session
3:22 P.M.: Public Hearing Resumes

MOTION : Agnich

I move that the Board of Adjustment, in Appeal No. **BDA 167-031**, on application of Rosemary Papa, represented by Misty Ventura, **deny** the 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, **and** 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, and is a self-created or personal hardship.

SECONDED: Gibson
AYES: 4 – Schulte, Gibson, Dutia, Agnich
NAYS: 1 - Sibley
MOTION PASSED: 4 – 1

FILE NUMBER: BDA167-032(SL)

BUILDING OFFICIAL’S REPORT: Application of Rosemary Papa, represented by Misty Ventura of Shupe Ventura, PLLC, for a variance to the height regulations at 13131 Preston Road. This property is more fully described as a 2.457 acre tract in Lot 3, Block A/7409, and is zoned PD 887 (Subdistrict 1B), which limits the maximum story height to 15 feet. The applicant proposes to construct a nonresidential structure with a story height of 30 feet, which will require a 15 foot variance to the height regulations.

LOCATION: 13131 Preston Road

APPLICANT: Rosemary Papa,
Represented by Misty Ventura of Shupe Ventura, PLLC

REQUEST:

A request for a variance to the height regulations (specifically to story height) of up to 15' is made to construct and maintain a 10-story hotel structure where the proposed 5th floor is 30' in height and exceeds the maximum story height of 15' required in PD 887 Subdistrict 1B by 15' on a site that is currently developed with a combination of surface parking and retail use that the applicant intends to demolish.

STANDARD FOR A VARIANCE:

The Dallas Development Code Section 51A-3.102(d)(10) 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 variance should be denied because there was no property hardship to the site that warranted a variance to the height regulations. The applicant had not demonstrated how the features of flat, somewhat irregular in shape, and approximately 2.5 acre site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 887 zoning classification while complying with code provisions including height regulations.

BACKGROUND INFORMATION:

Zoning:

Site: PD 887 (Planned Development)
North: PD 887 (Planned Development)
South: PD 887 (Planned Development)
East: PD 887 (Planned Development)
West: PD 887 (Planned Development)

Land Use:

The subject site is developed with a combination of surface parking and retail use that the applicant intends to demolish. The areas to the north east, south, and west are developed with nonresidential uses.

Zoning/BDA History:

1. Z123-186, Property located generally east of the Dallas North Tollway, south of Southern Boulevard, south of Monfort Place, south of the northern boundary of Woodchase Apartments, south of the northern boundary of Preston View Estates, west of Preston Road, and north of Interstate Highway 635 (LBJ Freeway). (Property that includes the subject site).

On June 12, 2013, the City Council created an ordinance changing the zoning on property that had been zoned PD 130, PD 215, PD 250, PD 279, PD 322, PE 423, PD 713, CR, CS, GO(A), RR, LO-2, MO-2, MF-1(A), MF-4(A), MU-1, MU-2, MU-3, and P(A) to PD 887.

2. BDA167-030, Property located at 13131 Preston Road (property west of the subject site)

On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to story height) of up to 25' made to construct and maintain a 2-story theater structure where the proposed 2nd floor is 40' in height and exceeds the maximum story height of 15' required in PD 887 Subdistrict 1B by 25'.

3. BDA167-031, Property located at 13131 Preston Road (property west of the subject site)

On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to the minimum number of stories required by PD 997) of 1 story is made to construct and maintain a 2-story theater structure, a structure that is 1-story less than the 3 stories required on properties in PD 887 (Subdistrict 1B).

4. BDA167-029, Property located at 13439 Preston Road (property east of the subject site)

On March 21, 2017, the Board of Adjustment Panel A will consider a request for a variance to the height regulations (specifically to story height) to construct and maintain a 4-story fitness facility structure where the proposed 2nd, 3rd, and 4th floors have stories at 20', 32', and 22' in height, respectively, and exceed the maximum story height of 15' required in PD 887 Subdistrict 1.

GENERAL FACTS /STAFF ANALYSIS:

- The request for a variance to the height regulations of (specifically to story height) of 15' focuses on constructing and maintaining a 10-story hotel structure where the proposed 5th floor is 30' in height and exceeds the maximum story height of 15' required in PD 887 Subdistrict 1B by 15' on a site that is currently developed with a combination of surface parking and retail use that the applicant intends to demolish.
- The subject site is zoned PD 887 (Subdistrict 1B). PD 887 provides the following related to "stories":
 1. Except as provided in this paragraph, minimum number of stories above grade is three. Minimum number of stories above grade for general commercial development types is two. Structures constructed in an esplanade within Street Section Type B1 of the Street Plans may not exceed one story. The minimum height provisions of Section 51A-13.302(b)(2), (3), (4), and (5) also apply.
 2. Maximum number of stories above grade is 20.
- Section 51A-13.304(a)(4) provides regulations for MU District Type specifically stating the ground story height is a minimum/maximum of 15'/30' and the upper story height is a minimum/maximum of 10'/15'.
- The applicant has submitted an elevation of the proposed 10-story hotel structure detailing the height of its 10 stories. The elevation denotes all floors/stories the 1st meet the height requirement with the exception of the 5 floor/story that is to be 30' (or 15' over the maximum story height).
- The site is flat, somewhat irregular in shape, and according to the application is 2.457 acres 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 PD 887 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 PD 887 zoning classification.

- If the Board were to grant the request for a variance to the height regulations, a determination should be made if any conditions should be imposed with this request (i.e. submitted site plan and/or elevation).

Timeline:

January 26, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 15, 2017: 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 March 1st deadline to submit additional evidence for staff to factor into their analysis; and the March 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 6, 2017: The applicant’s representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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: MARCH 21, 2017

APPEARING IN FAVOR: Misty Ventura, 9406 Biscayne, Dallas, TX
Scott Beck, 6622 Aberdeen Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION : **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 167-032**, on application of Rosemary Papa, represented by Misty Ventura, **deny** the 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, and 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.

SECONDED: **Dutia**

AYES: 4 – Schulte, Gibson, Dutia, Agnich

NAYS: 1 - Sibley

MOTION PASSED: 4 – 1

MOTION: **Agnich**

I move to adjourn this meeting.

SECONDED: **Gibson**

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

4:17 P. M.: Board Meeting adjourned for **March 21, 2017**

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.