

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
TUESDAY, APRIL 19, 2016**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Mark Rieves, regular member, Robert Agnich, alternate member, Peggy Hill, alternate member and Philip Lewis, alternate member

MEMBERS ABSENT FROM BRIEFING: Michael Gibson, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clayton Buehrle, Engineering, Donna Moorman, Chief Planner and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Mark Rieves, regular member, Robert Agnich, alternate member, Peggy Hill, alternate member and Philip Lewis, alternate member

MEMBERS ABSENT FROM HEARING: Michael Gibson, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clayton Buehrle, Engineering, Donna Moorman, Chief Planner and Trena Law, Board Secretary

11:01 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 19, 2016** docket.

1:05 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 March 22, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-029(SL)

BUILDING OFFICIAL’S REPORT: Application of Dennie K. Thompson for a special exception to the fence height regulations at 7710 Olusta Drive. This property is more fully described as Lot 2, Block G/6265, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 9 foot 6 inch high fence, which will require a 5 foot 6 inch special exception to the fence height regulations.

LOCATION: 7710 Olusta Drive

APPLICANT: Dennie K. Thompson

REQUEST:

A request for a special exception to the fence height regulations of 5’ 6” is made to acquire a permit to make what has already been constructed without the benefit of any permit into a legal fence – an 8’ high plywood and 9’ 6” high CMU fence in the site’s front yard setback on a site that is developed with a single family structure.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences 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 height regulations since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on acquiring a permit to make what has already been constructed without the benefit of any permit into a legal fence – an 8’ high plywood and 9’ 6” high CMU fence in the site’s front yard setback on a site that developed as a single family structure.
- 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 subject site is zoned R-7.5(A) and has a 25’ front yard setback.
- The applicant has submitted a site plan/elevation of the proposal with notations indicating that the proposal reaches a maximum height of approximately 9’ 6”.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 42’ in length parallel to the street, and approximately 7’ in length perpendicular to the street on the east and west sides of the site in the 25’ front yard setback.
 - The proposal is represented as being located approximately 17’ from the front property line, or approximately 23’ from the pavement line.
- Two single family lots developed with single family homes front the proposal, neither with fences that appear to be higher than 4’ in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area (properties along Olusta Drive from Longbranch Lane on the west to Whitestar Lane on the east) and noted no other fences higher than 4’ in front yard setbacks.
- As April 8, 2016, 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 exception to the fence height regulations of 5’ 6” will not adversely affect neighboring property.

- Granting this special exception of 5' 6" with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 4' in height in the front yard setback to be modified and maintained in the location and of the heights and materials as shown on this document.

Timeline:

January 3, 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.

March 15, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 15, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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."

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2016

APPEARING IN FAVOR: Dennie Thompson, 7710 Olusta Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Rieves

Motion was made to delay this case until the end of the meeting today.

SECONDED: Aginch

AYES: 5 – Nolen, Rieves, Agnich, Hill, Lewis

NAYS: 0 –

MOTION PASSED: 5 – 0(unanimously)

MOTION: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA156-029**, on application of Dennie Thompson, **grant** the request to construct and maintain a 9-foot 6-inch-high fence in the property’s front yard as a special exception to the fence height requirements 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/elevation is required.

SECONDED: Hill

AYES: 4 – Rieves, Agnich, Hill, Lewis

NAYS: 1 – Nolen

MOTION PASSED: 4 – 1

FILE NUMBER: BDA156-037(SL)

BUILDING OFFICIAL’S REPORT: Application of Jeffrey Woodward and Lori Ann Ott, represented by Coy Fite, for a variance to the front yard setback regulations and a special exception to the off-street parking regulations at 1302 E. Canterbury Court. This property is more fully described as Lot 11, Block 16/3803, and is zoned CD-13 (Subarea 1), which requires a front yard setback of 29 feet, and off-street parking to be provided. The applicant proposes to construct and maintain a structure and provide a 19 foot front yard setback which will require a 10 foot variance to the front yard setback regulations, and provide none of the required 1 parking spaces which will require a 1 space special exception to the off-street parking regulations.

LOCATION: 1302 E. Canterbury Court

APPLICANT: Jeffrey Woodward and Lori Ann Ott
Represented by Coy Fite

REQUESTS:

The following requests are made on a site that is developed with an existing single family use/structure:

1. A variance to the front yard setback regulations of up to 10' is made to construct and maintain an addition, part of which would be located as close as 22' from the site's front property line or 7' into the site's 29' front yard setback;
2. A variance to the front yard setback regulations of up to 10' is made to maintain a recently added 2nd floor, part of which is located as close as 19' from the front property line or 10' into in the site's 29' front yard setback;
3. A variance to the front yard setback regulations of up to 10' is made to remedy/maintain the nonconforming structure constructed in the 30's, part of which is located as close as 19' from the front property line or 10' into in the site's 29' front yard setback created in 2005; and
4. A special exception to the off-street parking regulations of 1 space is made to maintain the existing nonconforming single family use/structure where its existing garage was recently transitioned to living space, and not provide the 1 required parking space for the single family use on a site.

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.

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 (variances):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots zoned CD 13 given its irregular shape. The atypical lot with this irregular shape/physical site constraint precludes the applicant from developing it in a manner commensurate with development (in this case with a single family home with approximately 2,800 square feet of total living area) found on other similarly zoned CD 13 properties that are rectangular in shape.
- The applicant had submitted a document that represented that the house on the property with the addition, at approximately 2,800 square feet of total living area, is over 1,000 square feet less than the average of a sampling of 15 other CD 13 zoned properties that have approximately 3,900 square feet of living area, and that if the site were regular in shape there would be no need for the variance requests.

STAFF RECOMMENDATION (parking special exception):

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the single family use on the property is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer had no objections to this request.
- The applicant had substantiated how 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. This parking “reduction” request of 1 space is only made on the fact that the City does not recognize the location of two parking spaces denoted on the submitted site plan as spaces to fulfill the required off-street parking requirement because of their location in the required front yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: CD 13 (Conservation District)
North: CD 13 (Conservation District)
South: CD 13 (Conservation District)
East: CD 13 (Conservation District)
West: CD 13 (Conservation District)

Land Use:

The subject site is developed with a single family home structure/use. The areas to the north, south, and west are developed with single family uses; and the area to the east is developed with open/park space.

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 (variances):

- The requests for variances of up to 10' on the site developed with an existing approximately 2,300 square foot single family use/structure focus on the following:
 1. constructing and maintaining an approximately 300 square foot addition that would be located approximately 22' from the site's front property line or approximately 7' into the 29' front yard setback;
 2. maintaining a recently added, approximately 600, square foot 2nd floor located approximately 19' from the site's front property line or approximately 10' into the 29' front yard setback; and
 3. remedying/maintaining the nonconforming structure located approximately 19' from the site's front property line or approximately 10' into the 29' front yard setback.
- CD 13 states that the minimum front yard must equal the average of the front yards of the houses on contiguous lots.
- The application states that "we ask for a 19 foot setback" and the Building Official's report states that that the property at this address requires a front yard setback of 29 feet.
- Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned R-7.5(A) where the front yard setback is 25 feet.
- According to DCAD records, the "main improvement" at 1302 Canterbury Court is a structure built in 1939 with 2,363 square feet of living/total area; and with "additional improvements" listed as 176 square foot storage building.
- The applicant requested a variance to the front yard setback regulations to, among other things, remedy/address the nonconforming aspect of the existing nonconforming structure that is located in the site's front yard setback.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The applicant has submitted a document that represents that the house on the property with the addition at approximately 2,800 square feet of total living area is over 1,000 square feet less than the average of a sampling of 15 other CD 13 zoned properties with an approximately 3,900 square feet of living area.
- The site is relatively flat, irregular in shape, and according to the application is 0.22 acres (or approximately 9,600 square feet) in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances 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 variances to front yard setback regulations are 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 CD 13 zoning classification.
- The variances to front yard 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 CD 13 zoning classification.
- If the Board were to grant the front yard variance requests, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that what is shown on the submitted plan – a structure that is located as close as 19’ from the front property or as much as 10’ into the 29’ front yard setback.

GENERAL FACTS/STAFF ANALYSIS (parking special exception):

- This request focuses on maintaining an existing nonconforming single family use/structure where its existing garage was recently transitioned to living space, and not providing the 1 required parking space for the single family use on a site.
- The Dallas Development Code requires the following off-street parking requirement:
 - Single family use: one space in R-7.5(A), R-5(A), and TH districts; two spaces in all other districts. No handicapped parking is required.
- The subject site is zoned CD 13 (Conservation District) that states that in general, except as otherwise provided in the ordinance, the development standards of the R-7.5(A) Single Family District apply. Because CD 13 does not provide any specific provision to off-street parking requirements, the single family use on this site requires 1 space.
- The off-street parking provisions of the Dallas Development Code states that “in residential districts except an MF-3(A) or MF-4(A) district, required off-street parking for residential uses must be located behind a required front building line.”
- The submitted site plan represents no area on the site behind the required front building line in which a parking space is located. The site plan does represent an area on the site that would accommodate an area where two vehicles could park on the site. However, the location of this area in which these vehicles could park is located in the 29’ front yard setback. As a result, the City does not recognize these spaces as spaces to fulfill the required off-street parking requirement because of their location in the required front yard setback.
- The Sustainable Development and Construction Department Project 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 single family use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 1 space would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 1 space shall automatically and immediately terminate if and when the

single family use is changed or discontinued, the applicant would be allowed to maintain the single family use/structure on the site, and provide 0 of the 1 code required off-street parking spaces.

Timeline:

February 24, 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.

March 15, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 15, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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 29, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

April 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move to grant that the Board of Adjustment grant application **BDA 156-037(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required. Additionally, the special exception shall automatically and immediately terminate if and when the single family use on the property is changed or discontinued.

SECONDED: Nolen

AYES: 5 – Nolen, Rieves, Agnich, Hill, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-041(SL)

BUILDING OFFICIAL’S REPORT: Application of David Martin to enlarge a nonconforming use at 4111 Dallas Athletic Club Drive. This property is more fully described as a 310.19 acre tract of land, Tract 5, Block 8579, and is zoned A(A), which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming country club with private membership use, which will require a request to enlarge a nonconforming use.

LOCATION: 4111 Dallas Athletic Club Drive

APPLICANT: David Martin

REQUEST:

A request is made to enlarge a nonconforming “country club with private membership” use (Dallas Athletic Club), specifically constructing and maintaining two additions to the existing approximately 40,000 square foot clubhouse structure on the approximately 310 acre subject site: an approximately 1,800 square foot addition on the east, and an approximately 1,000 square foot addition on the west.

STANDARD FOR ENLARGING A NONCONFORMING USE:

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2)

would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: A (A)
North: MF-2 (A)
South: R-16 (A), R-7.5 (A), and City of Mesquite
East: MF-2 (A), R-7.5 (A), and City of Mesquite
West: R-16 (A) and R-10 (A)

Land Use:

The 310 acre subject site is developed as a “country club with private membership” use (Dallas Athletic Club). The nonconforming “country club with private membership” use contains an approximately 40,000 square foot clubhouse, two 18-hole golf courses, swimming pool, and 8 tennis courts. The areas to the north and east are developed with single family and multifamily uses; and the areas to the south and west are developed with single-family uses.

Zoning/BDA History:

1. BDA123-066, Property at 4111 LaPrada Drive (the subject site)

On June 18, 2013, the Board of Adjustment Panel A granted a request to enlarge a nonconforming “country club with private membership” use (Dallas Athletic Club). The board imposed the following conditions: compliance with the submitted site plan is required.

The case report stated that the request was made to construct and maintain an approximately 1,500 square foot hitting bay structure to be located in the virtual center of the approximately 310 acre subject site.

2. BDA 034-101, Property at 4111 LaPrada Drive (the subject site)

On December 9, 2003, the Board of Adjustment Panel A granted a request to enlarge a nonconforming “country club with private membership” use (Dallas Athletic Club). The board imposed the following conditions: Any and all investment in the nonconforming use and/or structure housing the nonconforming use shall not be taken into consideration if and when the nonconforming use is amortized; and compliance with the submitted site plan is required.

The case report stated that the 316+ acre subject site was developed as approximately 40,000 square foot clubhouse, two 18-hole golf courses, swimming pool, and 8 tennis courts); and that the proposal involved only enlarging the clubhouse component of this non-conforming use, specifically with a 1,548 square foot (or 3.5% of the total building footprint) dining room expansion, and a 3,712 square foot (or 8.5% of the total building footprint) fitness room expansion.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on the enlargement of a nonconforming “country club with private membership” use (Dallas Athletic Club) on the subject site, which in this particular case, involves the construction and maintenance of two additions to the existing approximately 40,000 square foot clubhouse structure on the approximately 310 acre subject site: an approximately 1,800 square foot addition on the east, and an approximately 1,000 square foot addition on the west.
- The subject site is zoned A(A) (Agricultural).

- A “country club with private membership” use is not permitted in A(A) Agricultural zoning districts with an SUP (Specific Use Permit).
- A “country club with private membership” use in an A (A) Agricultural zoning district is a *conforming* use once it has obtained an SUP (Specific Use Permit) from the City Council through a public hearing process.
- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- The applicant has submitted an overall site plan, and floor plans and elevations of the two proposed additions to the existing clubhouse structure on the 310 acre site that is technically the nonconforming use.
- This application is made to enlarge a nonconforming *use*. The application is *not* made to enlarge a nonconforming *structure*. The proposed hitting bay structure would be in compliance with development code standards such as setbacks, coverage requirements, height requirements, parking requirements, etc. Therefore, the proposed hitting bay structure would be a conforming structure as it relates to development code requirements, located within a broader land use classification (country club with private membership) that can only be deemed a conforming *use* once and if the zoning is changed/or an SUP is obtained.
- Records from Building Inspection Department indicate that the “country club with private membership” use has been identified by Building Inspection as a nonconforming use.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The applicant has the burden of proof to establish that the enlargement of the nonconforming use:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, with a condition imposed that the applicant comply with the submitted site plan, the enlargement of the nonconforming use would be limited to what is shown on this document.

Timeline:

February 25, 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.

March 15, 2016: 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.”

March 15, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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 29, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

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

April 6, 2016: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded additional documentation on this application to the Board Administrator (see Attachment C).

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move to grant that the Board of Adjustment grant application **BDA 156-041(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Nolen

AYES: 5 – Nolen, Rieves, Agnich, Hill, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-033(SL)

BUILDING OFFICIAL’S REPORT: Application of Ann Barbier-Mueller, represented by Tara Stevenson, for a special exception to the visual obstruction regulations at 5941 Averill Way. This property is more fully described as Lot 1, Block 5619, and is zoned R-1ac(A), which requires a 45 foot visibility triangle at street intersections. The applicant proposes to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 5941 Averill Way

APPLICANT: Ann Barbier-Mueller
Represented by Tara Stevenson

REQUEST:

A request for a special exception to the visual obstruction regulations is made to maintain a number of unspecified plant materials in the 45’ visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use.

(Note that this application is immediately north of a property where the same applicant and owner seeks a similar visual obstruction special exception from the Board of Adjustment Panel A on April 19th: BDA156-034).

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:

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer had recommended that this request be denied commenting “The shrubbery encroaching into the 45’ x 45’ visibility triangle is detrimental to the safety of the public.”
- The applicant had not substantiated how the location of unspecified plant materials in the 45’ visibility triangle where Averill Way intersects with Preston Road does not constitute a traffic hazard.

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

Zoning/BDA History:

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> 1. BDA156-034, Property at 5942 Averill Way (the property to the south of the subject site) | <p>On April 19, 2016, the Board of Adjustment Panel A will consider a request for a special exception to the visual obstruction made to maintain a number of unspecified plant materials in the 45’ visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on a number of unspecified plant materials in the 45’ visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use.

- 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).
- A site plan and an elevation have been submitted indicating what appears to be a number of unspecified plant materials located in the 45' visibility triangle where Averill Way intersects with Preston Road.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: "The shrubbery encroaching into the 45' x 45' visibility triangle is detrimental to the safety of the public."
- The applicant has the burden of proof in establishing how granting this request for a special exception to the visual obstruction regulations to maintain portions of unspecified plant materials in the 45' visibility triangle at where Averill Way intersects with Preston Road does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in the 45' visibility triangle where Averill Way intersects with Preston Road to that what is shown on these documents – unspecified plant materials.

Timeline:

February 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.

March 15, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 15, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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 28 & 30, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).
- April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.
- April 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: "The shrubbery encroaching into the 45' x 45' visibility triangle is detrimental to the safety of the public."

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2016

APPEARING IN FAVOR: Tara Stevenson, 2501 N Harwood, Dallas, TX
Melody Paradise, 2501 N. Harwood, Dallas, TX
Trieu Hoang, 2501 N. Harwood, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Rieves

I move that the Board of Adjustment in Appeal No. **BDA 156-033**, table this matter until the end of the meeting.

SECONDED: Hill

AYES: 1 – Hill

NAYS: 4 - Nolen, Rieves, Agnich, Lewis

MOTION FAILED: 1-4

MOTION #2: Nolen

I move that the Board of Adjustment in Appeal No. **BDA 156-033**, hold this matter until advisement until **May 17, 2016**.

SECONDED: Agnich

AYES: 5 – Nolen, Rieves, Agnich, Hill, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-034(SL)

BUILDING OFFICIAL’S REPORT: Application of Ann Barbier-Mueller, represented by Tara Stevenson, for a special exception to the visual obstruction regulations at 5942 Averill Way. This property is more fully described as a 1.077 acre parcel in Block 5622, and is zoned R-1ac(A), which requires a 45 foot visibility triangle at street intersections. The applicant proposes to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 5942 Averill Way

APPLICANT: Ann Barbier-Mueller
Represented by Tara Stevenson

REQUEST:

A request for a special exception to the visual obstruction regulations is made to maintain a number of unspecified plant materials in the 45’ visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use.

(Note that this application is immediately south of a property where the same applicant and owner seeks a similar visual obstruction special exception from the Board of Adjustment Panel A on April 19th: BDA156-033).

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:

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer had recommended that this request be denied commenting “The shrubbery encroaching into the 45’ x 45’ visibility triangle is detrimental to the safety of the public.”
- The applicant had not substantiated how the location of unspecified plant materials in the 45’ visibility triangle where Averill Way intersects with Preston Road does not constitute a traffic hazard.

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

Zoning/BDA History:

- | | |
|---------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. BDA156-033, Property at 5941 Averill Way (the property to the north of the subject site) | On April 19, 2016, the Board of Adjustment Panel A will consider a request for a special exception to the visual obstruction made to maintain a number of unspecified plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use. |
|---------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on a number of unspecified plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use.
- 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).
- A site plan and an elevation have been submitted indicating what appears to be a number of unspecified plant materials located in the 45' visibility triangle where Averill Way intersects with Preston Road.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: "The shrubbery encroaching into the 45' x 45' visibility triangle is detrimental to the safety of the public."
- The applicant has the burden of proof in establishing how granting this request for a special exception to the visual obstruction regulations to maintain portions of unspecified plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road does not constitute a traffic hazard.

- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in the 45' visibility triangle where Averill Way intersects with Preston Road to that what is shown on these documents – unspecified plant materials.

Timeline:

February 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.

March 15, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 15, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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 28 & 30, 2016: The applicant’s representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

April 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: "The shrubbery encroaching into the 45' x 45' visibility triangle is detrimental to the safety of the public."

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2016

APPEARING IN FAVOR: Tara Stevenson, 2501 N Harwood, Dallas, TX
Melody Paradise, 2501 N. Harwood, Dallas, TX
Trieu Hoang, 2501 N. Harwood, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Nolen**

I move that the Board of Adjustment in Appeal No. **BDA 156-034**, hold this matter until advisement until **May 17, 2016**.

SECONDED: **Agnich**

AYES: 5 – Nolen, Rieves, Agnich, Hill, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Nolen**

I move to adjourn this meeting.

SECONDED: **Agnich**

AYES: 5 – Nolen, Rieves, Agnich, Hill, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

1:57 P. M.: Board Meeting adjourned for **April 19, 2016**

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.