

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, MAY 16, 2017**

MEMBERS PRESENT AT BRIEFING: Michael Gibson, regular member, Elizabeth Nelson, regular member, Renee Dutia, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: Peter Schulte, vice-chair

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

MEMBERS PRESENT AT HEARING: Michael Gibson, regular member, Elizabeth Nelson, regular member, Renee Dutia, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: Peter Schulte, vice-chair

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Jennifer Munoz, Senior Planner, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 16, 2017** docket.

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**1:01 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel April 18, 2017 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2017**

MOTION: None

The minutes were approved without a formal vote.

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**FILE NUMBER:** BDA167-051(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Russell Ferraro, represented by Michael R. Coker, for special exceptions to the fence standards at 5814 Watson Avenue. This property is more fully described as Lot 2 & part of Lot 3, Block F/5614, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and/or maintain an 8 foot 2 inch high fence in a required front yard, which will require a 4 foot 2 inch special exception to the fence standards, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards.

**LOCATION:** 5814 Watson Avenue

**APPLICANT:** Russell Ferraro  
Represented by Michael R. Coker

**REQUEST:**

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

- 1) A special exception related to fence height of 4' 2" is made to complete and maintain a fence higher than 4' in height in the front yard setback (an 8' high masonry fence with 8' 2" high stone columns and a 3' 10" high open metal fence with 4' 2" high stone columns); and
- 2) A special exception related to fence materials is made to complete and maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned two fence types) located as close as on the front lot line (or less than 5' from this front lot line).

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 078-125, Property at 5807 Watson Avenue (northwest of the subject site)

On September 15, 2008, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' 6" and imposed the following condition: compliance with the submitted site plan and partial elevation is required, and a variance to the front yard setback regulations of 23' 6" and imposed the following conditions: Compliance with the submitted site plan (indicating a 16 foot, 9 inch setback) is required; and the storage building must remain behind the existing shrubs as stated in the letter from Warren Packer dated August 26, 2008.

The case report state that the following appeals were made in this application on a site currently developed with a single family home: special exceptions to the fence height regulations of 4' 6" were requested in conjunction with constructing and maintaining a 7' high open iron fence with 8' 6" high columns, an 8' 6" high Watson Avenue open iron gate, and an 8' high Douglas Avenue open iron gate (both gates with 8' 6" high stucco columns) in the site's 40' front yard setbacks along Watson Avenue and

Douglas Avenue; and a variance to the front yard setback regulations of 23' 6" was requested in conjunction with constructing and maintaining an approximately 150 square foot storage building in the site's 40' Douglas Avenue front yard setback.

2. BDA090-046, Property at 5806 Watson Avenue (west of the subject site)

On April 21, 2010, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 8' and imposed the following condition: submitted revised site plan and revised partial site plan/elevation document is required.

The case report stated that the applicant was seeking a special exception to the fence height regulations of 9 feet\* in conjunction with constructing and maintaining a primarily 8' high masonry wall in the site's 40' Watson Avenue front yard setback. This special exception proposal also included an entryway wall feature that included two 5' – 8' high solid metal vehicular gates with a 4'- 9' high solid masonry wall between these two gates – gates flanked by two 10' high columns and two 12' high columns.

\* Even though the application and the Building Official's Report mentions a 9' special exception, nothing on the submitted revised site plan and elevation appears to be higher than 12' which would require an 8' special exception.

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

- The requests for special exceptions to the fence standards focus on completing and maintaining: 1) a fence higher than 4' in height in the front yard setback (an 8' high masonry fence with 8' 2" high stone columns and a 3' 10" high open metal fence with 4' 2" high stone columns); and, 2) a fence with panels with surface areas that are less than 50 percent open (the aforementioned two fence types) located as close as on the front lot line (or less than 5' from this front lot line).
- The subject site is zoned R-1ac(A).
- Note the following with regard to the request for special exceptions to the fence standards pertaining to the **height** of the proposed fence in the front yard setback:
  - The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
  - The applicant has submitted a site plan and elevation of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 8' 2".

- The following additional information was gleaned from the submitted site plan:
  - The proposal over 4' in height is represented as being approximately 34' 4.5" in length to the east and about 4' to the west perpendicular to the street, and approximately 11 stone columns parallel to the street on the north side of the site in the front yard setback
- Note the following with regard to the request for special exception to the fence standards pertaining to the **location and materials** of the proposed fence:
  - The Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
  - With regard to the special exception to the fence standards pertaining to the location and materials of the proposed fence, the applicant has submitted a site plan and elevation of the fence with fence panels with surface areas that are less than 50 percent open (an 8' high masonry fence with 8' 2" high stone columns and a 3' 10" high open metal fence with 4' 2" high stone columns) located as close as on the front lot line (or less than 5' from this front lot line).
- Two single family lots developed with single family structures front the proposed fence, both with fences in the front yard. The home to the northwest has history with the Board of Adjustment, Panel C from 2008 to allow a fence higher than 4' in the front yard (BDA078-125). The property to the northeast has a front yard fence located in the front yard, in accordance with required height and materials regulations.
- The Board Senior Planner conducted a field visit of the site and surrounding area (properties along Watson Drive from Douglas Avenue on the west to Preston Road) and noted eight other fences over 4' in height and in front yard setback.
  - a. A 7' high open iron fence with 8' 6" high columns, an 8' 6" high Watson Avenue open iron gate, and an 8' high Douglas Avenue open iron gate (both gates with 8' 6" high stucco columns located northwest that appears to be a result of fence height special exception request granted in 2008: BDA078-125. (See the "Zoning/BDA History" section of this case report for additional details).
  - b. A primarily 8' high masonry wall with an entryway wall feature that included two 5' – 8' high solid metal vehicular gates with a 4'- 9' high solid masonry wall between these two gates – gates flanked by two 10' high columns and two 12' high columns located west that appears to be a result of fence height special exception request granted in 2008: BDA090-046. (See the "Zoning/BDA History" section of this case report for additional details).
  - c. A chain-link fence greater than 4' located east with no BDA history.
  - d. A solid wood fence greater than 4' located on the south side of Watson Drive, east of the subject site with no BDA history.
  - e. A wrought iron fence greater than 4' located on the south side of Watson Drive, east of the subject site with no BDA history.
  - f. A 6' 4" high open iron picket fence with an arched open wrought iron picket gate that reaches 9' located southeast that appears to be a result of fence height special exception request granted in 2014: BDA145-124. (outside of the general history area).

- g. A wrought iron fence with masonry columns greater than 4' located on the north side of Watson Drive, east of the subject site with no BDA history.
- h. A brick fence with wrought iron gates greater than 4' located on the north side of Watson Drive, east of the subject site with no BDA history.
- As of May 5, 2017, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height over 4' in the front yard setback and materials/height/location of the proposed fence will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line to be constructed and maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

February 21, 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.

April 11, 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".

April 19, 2017: The Board Administrator emailed the following information to the applicant's representative:

- 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 April 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

May 2, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Director of Sustainable Development and Construction, the Building Official, 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: MAY 16, 2017**

**APPEARING IN FAVOR:** Michael Coker, 3111, Canton St., Dallas, TX  
Harold Liedner, 1601 Surveyor Blvd., Carrollton, TX

**APPEARING IN OPPOSITION:** No one

**MOTION #1: Sibley**

I move that the Board of Adjustment, in Appeal No. **BDA 167-051**, on application of Russell Ferraro, represented by Michael Coker, **grant** the request of this applicant to construct and/or maintain an eight-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 revised site plan and elevation is required.

**SECONDED: Gibson**

**AYES:** 5 – Gibson, Nelson, Dutia, Agnich, Sibley

**NAYS:** 0 -

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

**MOTION #2: Sibley**

I move that the Board of Adjustment, in Appeal No. **BDA 167-051**, on application of Russell Ferraro, represented by Michael Coker, **grant** the request of this applicant to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line as a special exception to the materials 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 revised site plan and elevation is required.

**SECONDED: Gibson**

**AYES:** 5 – Gibson, Nelson, Dutia, Agnich, Sibley

**NAYS:** 0 -

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA167-053(SL)

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin of Baldwin and Associates for special exceptions to the fence standards at 5215 Lobello Drive. This property is more fully described as Lot 14B, Block A/5518, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and maintain a 6 foot 6 inch high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence standards, and to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards.

LOCATION: 5215 Lobello Drive

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUESTS:

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

1. A special exception related to fence height of 2' 6" is made to complete and maintain a fence higher than 4' in height in the front yard setback (a 6' high open wrought iron fence with 6' high stone columns with a 6' 6" high open wrought iron entry gate flanked by two, approximately 12' long curved 5' – 6' high stone wing walls parallel to the street and perpendicular to the street on the east side in the front yard setback, and a 6' 6" high solid masonry wall perpendicular to the street on the west side in the front yard setback); and
2. A special exception related to fence materials is made to complete and maintain a fence with panels with surface areas that are less than 50 percent open - the aforementioned two, approximately 12' long curved 5' – 6' high stone wing walls located as close as on the front lot line parallel to the street, and the 6' 6" high solid masonry wall perpendicular to the street on the west side in the front yard setback beginning on the front lot line (or less than 5' from this front lot line).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

1. BDA156-022, Property at 5215 Lobello Drive (the subject site)

On March 22, 2016, the Board of Adjustment Panel A denied a request for a special exception to the fence height regulations of 4' 3" without prejudice.

The case report stated that the request was made to construct and maintain the following fence proposal in the front yard setback on a site being developed with a single family home: a 6' high open wrought iron fence with 6' 6" high stone columns; and an 8' 3" high open wrought iron arched vehicular entry gate with 7' 3" high columns flanked by 5' 6" – 6' 6" high, approximately 9' long curved solid stone wing walls.

2. BDA989-289, Property at 5100 Lobello Drive (the property west of the subject site)

On November 15, 1999, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 2.5' and imposed the following condition: compliance with the revised site plan/elevation showing a 6.5 foot open wrought iron fence as depicted on page 1-23 of today's briefing handout on this case, dated November 10, 1999 is required.

The case report stated that the applicant's representative submitted a letter and a revised site plan/elevation indicating a maximum 6.5' high open iron fence setback from the property line a varying distances between 9' - 12' (see Attachment D); and that the fence would have an "undulating" appearance so that a number of large existing trees on the site will remain on the street side of the fence.

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

- The requests for special exceptions to the fence standards related to fence height and fence materials focus on completing and maintaining the following on a site developed with a single family home:
  1. a 6' high open wrought iron fence with 6' high stone columns with a 6' 6" high open wrought iron entry gate flanked by two, approximately 12' long curved 5' – 6' high stone wing walls parallel to the street and perpendicular to the street on the east side in the front yard setback, and a 6' 6" high solid masonry wall perpendicular to the street on the west side in the front yard setback.
  2. two, approximately 12' long curved 5' – 6' high stone wing walls located as close as on the front lot line parallel to the street, a 6' 6" high solid masonry wall perpendicular to the street on the west side in the front yard setback beginning on the front lot line (or less than 5' from this front lot line).
- The subject site is zoned R-1ac(A).
- Note the following with regard to the request for special exceptions to the fence standards pertaining to the **height** of the proposed fence in the front yard setback:
  - The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
  - The applicant has submitted a revised site plan and revised elevation of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 6' 6".
  - The following additional information was gleaned from the submitted revised site plan:

- The proposal over 4’ in height is represented as being approximately 230’ in length parallel to the street, and approximately 40’ in length perpendicular to the street on the east and west sides of the site in the front yard setback.
- The fence and gate proposal is represented as being located approximately 0 – 8’ from the front property line or approximately 12’ – 24’ from the pavement line.
- Note the following with regard to the request for special exception to the fence standards pertaining to the **location and materials** of the proposed fence:
  - The Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
  - The applicant has submitted a revised site plan and revised elevation of the fence with fence panels with surface areas that are less than 50 percent open (two, approximately 12’ long curved 5’ – 6’ high stone wing walls) located as close as on the front lot line, and a 6’ 6” high solid masonry wall perpendicular to the street on the west side in the front yard setback beginning on the front lot line (or less than 5’ from this front lot line).
- Two single family lots developed with single family structures front the proposed fence, neither with fences in the front yard.
- The Board Administrator conducted a field visit of the site and surrounding area (properties along Lobello Drive from Inwood Road on the west to approximately 300 feet to the east of the site) and noted one other fence over 4’ in height and in front yard setback. This fence is approximately 6.5’ high open metal fence located immediately west that appears to be a result of fence height special exception request granted in 1999: BDA989-289. (See the “Zoning/BDA History” section of this case report for additional details).
- As of May 5, 2017, no letters had been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height over 4’ in the front yard setback and materials/height of the proposed fence relative to the front lot line will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would require the proposal exceeding 4’ in height in the front yard setback and with fence panels with surface areas less than 50 percent open located less than 5’ from the front lot line to be constructed and maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

February 21, 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.

April 11, 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".

- April 11, 2017: The Board Administrator emailed the following information to the applicant's representative:
- 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 April 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

April 27, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 2, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Director of Sustainable Development and Construction, the Building Official, 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: MAY 16, 2017**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Nelson**

I move to grant that the Board of Adjustment grant application **BDA 167-053(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 revised site plan and revised elevation is required.

**SECONDED: Agnich**

**AYES:** 5 – Gibson, Nelson, Dutia, Agnich, Sibley

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA167-054(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Nathan Russo for a special exception to the fence standards at 9323 Sunnybrook Lane. This property is more fully described as Lot 5, Block 13/5586, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 6 foot 8 inch high fence in a required front yard, which will require a 2 foot 8 inch special exception to the fence standards.

**LOCATION:** 9323 Sunnybrook Lane

**APPLICANT:** Nathan Russo

**REQUEST:**

The following request has been made on a site that is developed with a single family use:

1. A request for a special exception to the fence height regulations of 2 foot 8 inches is made to construct and maintain a 6 foot high open wrought iron fence with two 22 foot 4 inch wide gates up to 6 feet 8 inches in height in the 40’ Sunnybrook Lane front yard setback.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

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

**STAFF RECOMMENDATION (special exception):**

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-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 structure. The areas to the north, south, and west are developed with single family uses; and the area to the east is undeveloped.

**Zoning/BDA History:**

1. BDA156-096, Property at 4815 Brookview Drive (east of the subject site)

On September 21, 2016, the Board of Adjustment Panel B denied the following without prejudice:

1. A request for a variance to the front yard setback regulations of up to 25' is made to construct and maintain a single family structure and spa structure, part of which would be located as close as 15' from the one of the site's two front property lines (Sunnybrook Lane) or as much as 25' into this 40' front yard setback.

2. A request for a special exception to the fence height regulations of 6' is made to construct and maintain a 10' high solid "CMU garden wall with stucco finish" fence in the 40' Sunnybrook Lane front yard setback.

2. BDA145-008, Property at 9246 Sunnybrook Lane (southeast of the subject site)

On January 20, 2015, the Board of Adjustment Panel A granted a request for a special exception to fence height regulations of 4' and imposed the submitted revised site plan and revised elevation as a condition to the request.

The case report stated that the request was made to construct and maintain an 8' high limestone veneer masonry fence towards the northwest of the property, a 6'-2" high painted steel fence between 2 evergreen hedges towards the west and south sides of the property, one 6'-2" high painted steel service gate towards the south of the property, and one 8' high painted steel vehicular gate towards the northwest of the property, parallel and perpendicular to Sunny Brook

Lane, in the 40' required front yard on a site developed with a single family home/use.

3. BDA88-054, Property at 9346 Sunnybrook Lane (the property northeast of the subject site)

On May 10, 1998, the Board of Adjustment granted a request for a special exception to fence height regulations of 6' and imposed the following condition: "subject to a revised elevation and landscape plan and site plan to be approved."

The case report stated that the request was made to construct and maintain a wrought iron picket fence with 8' high gates and columns with light fixtures on top.

**GENERAL FACTS/STAFF ANALYSIS (special exception):**

- This request for a special exception to the fence height regulations of 2' 8" focuses on constructing and maintaining a 6 foot high open wrought iron fence with two 22 foot 4 inch wide gates up to 6 feet 8 inches in height in the 40' Sunnybrook Lane front yard setback.
- The subject site is zoned R-1ac(A) which requires a 40' front yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- A scaled site plan and fence elevation has been submitted indicating a fence proposal that will reach 10' in height in the 40' Sunnybrook Lane front yard setback.
- The applicant has submitted a site plan and elevation of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 6' 8".
- The following additional information was gleaned from the submitted site plan:
  - The proposal over 4' in height is represented as being approximately 192' in length parallel to the street on the south side of the site in the front yard setback.
  - The total length includes two 22' 4" wide gates.
- The proposal is located across from two undeveloped lots, one of which has a visible fence over 4' in height in the front yard setback, the second of which proposed a fence higher than 4' in the front yard setback in 2016, but was denied by BDA Panel B (BDA88-054 and BDA156-096, respectively).
- The Board Administrator conducted a field visit of the site and surrounding area along Sunnybrook Lane (from Brookview Drive north to Deloache Avenue) and noted four other fences that appeared to be above 4' in height:
  - a. An approximately 6' high open wrought iron picket fence was noted to the south of the site with no recorded BDA history.
  - b. A brick fence higher than 4' was noted to the west of the site with no recorded BDA history.
  - c. An approximately 6' high open wrought iron picket fence was noted northeast that appeared to be a result of a fence height special exception

granted by the Board in 1998: BDA88-054 (see the “Zoning/BDA History” section of this case report for further details).

- d. An open wrought iron fence with brick columns higher than 4’ and a chain-link fence with brick columns higher than 4’ were noted northeast of the site with no recorded BDA history.
- As of May 5, 2017, 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’ will not adversely affect neighboring property.
  - Granting this special exception request of 2’ 8” with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4’ in height in the Sunnybrook Lane front yard setback to be constructed and maintained in the location and of the heights and material as shown on these documents.

### **Timeline:**

February 22, 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.

April 11, 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”.

April 19, 2017: The Board Administrator emailed the following information to the applicant’s representative:

- 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 April 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

May 2, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Director of Sustainable Development and Construction, the Building Official, 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: MAY 16, 2017**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Nelson**

I move to grant that the Board of Adjustment grant application **BDA 167-054(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 and elevation is required.

SECONDED: **Agnich**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA167-063(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Robert Baldwin of Baldwin and Associates for a special exception to the fence standards at 3815 Oak Lawn Avenue. This property is more fully described as Lot 1A, Block 6/1565, and is zoned PD 193 (MF-2), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 11 foot 2 inch high fence in a required front yard, which will require a 7 foot 2 inch special exception to the fence standards.

LOCATION: 3815 Oak Lawn Avenue

APPLICANT: Robert Baldwin of Baldwin and Associates

**REQUEST:**

A request for a special exception to the fence standards related to height of 7 2” is made to construct and maintain a “fence” (an 11’ 6” long, 11’ 2” high pedestrian gate/archway and 5’ high metal posts with finials to an approximately 3’ 8” high open metal fence) higher than 4’ in height in the site’s front yard setback on a site developed

with a church/private school (Holy Trinity Catholic Church and Holy Trinity Catholic School).

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (MF-2) (Planned Development, Multifamily)  
North: PD 193 (MF-2) (Planned Development, Multifamily)  
South: PD 8 (Planned Development)  
East: PD 193 (MF-2) (Planned Development, Multifamily)  
West: PD 193 (MF-2) (Planned Development, Multifamily)

**Land Use:**

The subject site is developed with a church/private school (Holy Trinity Catholic Church and Holy Trinity Catholic School). The areas to the north, south, east, and west are developed with mix of residential and nonresidential uses.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- The request for a special exception to the fence standards related to height of 7' 2" focuses on constructing and maintaining an 11' 6" long, 11' 2" high pedestrian gate/archway and 5' high metal posts/finials to an approximately 3' 8" high open metal fence in the site's front yard setback on a site developed with a church/private school (Holy Trinity Catholic Church and Holy Trinity Catholic School).
- The subject site is zoned PD 193 (MF-2 Subdistrict) which requires a 15' front yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.

- A revised site plan/elevation has been submitted of the proposal with notations indicating that the proposal reaches a maximum height of 11' 2".
- The submitted revised site plan represents the following:
  - The “archway” proposal is represented as being approximately 11' 6" in length parallel to the street.
  - The “archway” proposal is represented as being located approximately on the front property line or approximately 10' from the pavement line.
- The submitted revised site plan and elevation represents that the other component of the proposal (5' high metal posts with finials to an approximately 3' 8' high open metal fence) is approximately 180' in length parallel to the street, on the property line, and approximately 10' from the pavement line.
- No single family lot fronts the proposal.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no fences that appeared to be above 4' in height and located in a front yard setback.
- As of May 5, 2017, no letters had 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 standards of 7' 2" will not adversely affect neighboring property.
- Granting this special exception of 7' 2" with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would require the proposal exceeding 4' in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

- March 13, 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.
- April 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 11, 2017: 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 April 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and May 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 26, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 2, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Director of Sustainable Development and Construction, the Building Official, 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: MAY 16, 2017**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Nelson**

I move to grant that the Board of Adjustment grant application **BDA 167-063(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 revised site plan and revised elevation is required.

SECONDED: **Agnich**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA167-055(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Michael Oppedisano for a variance to the lot coverage regulations at 5421 Richard Avenue. This property is more fully described as Lot 25, Block 20/1940, and is zoned CD 15, which requires that all structures may not exceed 40% maximum lot coverage. The applicant proposes to construct and maintain a structure which will exceed the maximum lot coverage and which will require a 360 square foot variance (+/-4.6%) to the lot coverage regulations.

**LOCATION:** 5421 Richard Avenue

**APPLICANT:** Michael Oppedisano

**May 16, 2017 Public Hearing Notes:**

- The applicant submitted additional written documentation to the Board at the public hearing.

**REQUEST:**

A request for a variance to the lot coverage regulations of 360 square feet or approximately 4.6 percent is made to construct and maintain an addition to an existing single family home which would exceed the required 40 percent maximum lot coverage on the subject site.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Staff concluded that the applicant had not substantiated how the variance to the lot coverage regulations was necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same CD 15 zoning district.
- Staff concluded that the variance should be denied because there was no property hardship to the site that warranted a variance to the lot coverage regulations. The applicant had not demonstrated to staff how the features of the site (which is

rectangular in shape and at 7,800 square feet is of similar size as others in the zoning district) have precluded it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 15 zoning classification – the site is currently developed with a single family home with approximately 4,000 square feet of living area that complies with the Dallas Development Code.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CD 15 (Conservation District)  
North: CD 15 (Conservation District)  
South: CD 15 (Conservation District)  
East: CD 15 (Conservation District)  
West: CD 15 (Conservation District)

### **Land Use:**

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

### **Zoning/BDA History:**

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

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

- The request for a variance to the lot coverage regulations of 360 square feet or approximately 4.6 percent focuses on constructing and maintaining an addition to an existing single family home exceeding the required 40 percent maximum lot coverage on the subject site.
- CD 15 provides the following:
  - Lot coverage. Maximum lot coverage is 40 percent for new and existing houses. Maximum lot coverage is 45 percent for original houses.
  - Original house means a main building that existed on a lot as of December 31, 1939.
- According to DCAD records, the “main improvement” for property addressed at 5421 Richard Avenue is a structure built in 2007 with 3,915 square feet of total/living area with the following “additional improvements”: a 400 square foot attached garage and a pool.
- The application states that a variance is made for building an addition to overcome a restrictive slope which will exceed the 40 percent maximum lot coverage in a conservation district by 353.34 square feet of 4.53 percent.
- The submitted site plan denotes the building footprint of the existing structure and proposed addition. The plan notes an area “existing garage area to be converted into AC area (393 sq ft)” and an area “garage addition area 363 sq ft”.

- The submitted site plan makes the following notations:
  - Existing house slab: 3,005 square feet
  - New addition slab: 468 square feet
  - Total final house slab: 3,473 square feet
  - Total lot area: 7,800 square feet
  - Existing lot coverage: 38.53 percent
  - New lot coverage: 44.53 percent
  - Maximum lot coverage: 40 percent
  - Surplus lot coverage: 4.53 percent
- A document has been submitted by an engineer stating that “We propose that a garage adjacent to and behind the existing garage be constructed at a +11” difference elevation; thus resulting in positive drainage towards the alley per Drawing C2. It is important that proper curbing and swales be included in the final construction documents that ensure that lot to lot drainage is avoided. Attached are drawings C1 and C2 which include the present elevations and proposed elevations respectively.”
- Documents have been submitted that show existing and proposed elevations. The existing elevations document represents a -2.0” drop/pitch on the north side of the existing garage; the proposed elevations document represents a +8.0” raise on the north side of the proposed garage.
- The applicant has submitted a document that states among other things that how the restrictive slope on the site results in flooding to the existing garage and that there is a negative pitch from the alley down the driveway and to the garage; that regarding the negative pitch to improve drainage is not feasible; and that granting this variance will allow for the addition of a new garage that is elevated which will then allow for proper pitch away from the house and prevent further flooding and damage to the existing structure.
- The applicant has provided a table of 8 other properties adjacent in CD 15 where the average “total living square feet” is 4,145; and the proposed “total living square feet” on the site is 4,275.
- From what could be seen of the subject site from a field visit conducted by the Board Administrator in April of 2017, the site is flat, rectangular in shape, and 7,800 square feet in area. The site is zoned CD 15 but prior to its creation in 2006, the property had been zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the lot coverage regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 15 zoning classification.
  - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 15 zoning classification.

- If the Board were to grant the lot coverage variance request, and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on this document.

**Timeline:**

February 17, 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.

April 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 11, 2017: 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 April 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and May 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 24, 2017: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official’s Report to the Board Administrator (see Attachment A).

April 28, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

May 2, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Director of Sustainable Development and Construction, the Building Official, 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: MAY 16, 2017**

APPEARING IN FAVOR: Michael Oppedisano, 5421 Richard Ave., Dallas, TX

APPEARING IN OPPOSITION: Rick Bentley, 5551 Vickery, Dallas, TX

MOTION: **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 167-055**, on application of Michael Oppedisano, **grant** the 360 square-foot variance to the maximum lot coverage regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Sibley**

AYES: 4 – Gibson, Nelson, Dutia, Agnich, Sibley

NAYS: 1 - Nelson

MOTION PASSED: 4 – 1

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MOTION: **Nelson**

I move to adjourn this meeting.

SECONDED: **Gibson**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

**2:34 P. M.:** Board Meeting adjourned for **May 16, 2017**

\_\_\_\_\_  
CHAIRPERSON

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

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BOARD SECRETARY

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