

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL COUNCIL CHAMBERS
WEDNESDAY, May 22, 2019**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, chair, Marla Beikman, regular member, Rodney Milliken, regular member, Joanna Hampton, regular member and Damian Williams, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, chair, Marla Beikman, regular member, Rodney Milliken, regular member, Joanna Hampton, regular member and Damian Williams, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, Elaine Hill, Board Secretary and David Nevarez, Engineering

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, Elaine Hill, Board Secretary and David Nevarez, Engineering

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 22, 2019 docket.**

BOARD OF ADJUSTMENT ACTION: May 22, 2019

1:02 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 B April 17, 2019 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: May 22, 2019

MOTION: None

The minutes were approved.

FILE NUMBER: BDA189-054(OA)

BUILDING OFFICIAL’S REPORT: Application of Diana Martinez for special exceptions to the fence standards and visual obstruction regulations at 6700 Overlook Drive. This property is more fully described as Lot 1, Block 14/5814, and is zoned R-7.5(A), which prohibits the use of certain materials for a fence, and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain a fence of a prohibited material, which will require a special exception to the fence standards regulations, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 6700 Overlook Drive

APPLICANT: Diana Martinez

REQUESTS:

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

1. A request for a special exception to the fence standard regulations is made to maintain a fence and a rolling gate of a prohibited fence material (corrugated metal) on the property;
2. A request for a special exception to the visual obstruction regulations is made to maintain portions of a 6’ high corrugated metal fence and portions of a rolling metal 6’ gate in the two 20’ visibility triangles on both sides of the driveway into the site from Donna Drive.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d) (3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION (fence standards):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objection to the request.
- Staff concluded that request for a special exception to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items located in the visibility triangles does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

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:

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

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- The request for a special exception to the fence standards is made to maintain a fence of a prohibited fence material (corrugated metal) on a site developed with a single-family home.

- Section 51A-4.602(a)(9) of the Dallas Development Code states that except as provided in this subsection, the following fence materials are prohibited:
 - Sheet metal;
 - Corrugated metal;
 - Fiberglass panels;
 - Plywood;
 - Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
 - Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and
 - Barbed wire razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.
- The applicant has submitted a site plan and elevation of the existing corrugated metal fence located on the property.
- The submitted elevation included a 6' high corrugated metal fence.
- The submitted site plan represents a site that is approximately 7,600 square feet in area where approximately 131 linear feet of prohibited fence material (corrugated metal) is located on the property.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and the surrounding area. Two other fences that appear to be of prohibited material were noted to the south and northeast of the subject site. These existing fences have no recorded BDA history.
- As of May 8, 2019, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to a prohibited fence material (corrugated metal) will not adversely affect neighboring property.
- If the Board were to grant the special exception and impose the submitted site plan and elevation as a condition, the location of the metal panel fence would be limited to what is shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

- The requests for special exceptions to the visual obstruction regulations focus on maintaining portions of a 6' high corrugated metal fence and portions of a rolling metal 6' gate in the two 20' visibility triangles on both sides of the driveway into the site from Donna Drive.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

- The property is located in R-7.5(A) zoning district which requires the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.
- A site plan and elevation have been submitted indicating portions of a 6' high corrugated metal fence and portions of a rolling metal 6' gate in the two 20' visibility triangles on both sides of the driveway into the site from Donna Drive.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations to maintain portions of a 6' high corrugated metal fence and portions of a rolling metal 6' gate in the two 20' visibility triangles on both sides of driveway into the site from Donna Drive 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 to be maintained in the two 20' visibility triangles on both sides of driveway into the site from Donna Drive to that what is shown on these documents – a 6' high corrugated metal fence and rolling metal gate.

Timeline:

- March 4, 2019: 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 8, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- April 10, 2019: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standards that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 7, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the

Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

May 9, 2019: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Has no objections".

BOARD OF ADJUSTMENT ACTION: May 22, 2019

APPEARING IN FAVOR: Diana Martinez, 6700 Overlook Dr., Dallas, TX
Jose Lazalde, 6700 Overlook Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION 1 of 2: Hampton

I move that the Board of Adjustment, in Appeal No. BDA 189-054, on application of Diana Martinez, **deny** the special exception requested by this applicant to maintain a fence of a prohibited material, **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Beikman

AYES: 3 - Beikman, Hampton, Milliken

NAYS: 2 - Hounsel, Williams

MOTION PASSED: 3 – 2

Motion 2 of 2: Hounsel

I move that the Board of Adjustment, in Appeal No. BDA 189-054, on application of Diana Martinez, **grant** the request to construct and/or maintain items in the visibility triangle at the driveway approaches as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code, as amended:

- Compliance with the submitted site plan is required.

SECONDED: Beikman

AYES: 3 - Beikman, Hampton, Milliken, Hounsel, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-057(OA)

BUILDING OFFICIAL’S REPORT: Application of William R. Crowell, Sr., represented by Daniel Dodds, for special exceptions to the visual obstruction regulations at 5947 Mercedes Avenue. This property is more fully described as Lot 12, Block H/2861, and is zoned CD 11, which requires a 20 foot visibility triangle at driveway and alley approaches. The applicant proposes to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5947 Mercedes Avenue

APPLICANT: William R. Crowell, Sr.
Represented by Daniel Dodds

REQUESTS:

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

1. A request is made to maintain portions of an 8’ high solid wood fence and portions of an 8’ high rolling solid wood gate in the two 20’ visibility triangles on both sides of the driveway into the site from Concho Street; and
2. A request is made to maintain portions of an 8’ high solid wood fence in the 20’ visibility triangle at where the alley meets Concho Street.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d) (3) of the Dallas Development Code states that the Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items to be maintained in the visibility triangles do not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: CD 11 (Conservation District)
North: CD 11 (Conservation District)
South: CD 11 (Conservation District)
East: CD 11 (Conservation District)
West: CD 11 (Conservation District)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The requests for special exceptions to the visual obstruction regulations on a site developed with a single-family home focus on:
 1. maintaining portions of an 8' high rolling solid wood gate in the two 20' visibility triangles on both sides of the driveway into the site from Concho Street; and
 2. maintaining portions of an 8' high solid wood fence in the 20' visibility triangle at where the alley meets Concho Street.
- Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The property is located in CD 11 zoning district which requires the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.
- A site plan and elevation have been submitted indicating portions of an 8' high solid wood fence and portions of an 8' high rolling wood gate located in the two 20' visibility triangles on both sides of the driveway into the site from Concho Street, and indicating portions of an 8' high solid wood fence located in the 20' visibility triangle at where the alley meets Concho Street.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections."

- The applicant has the burden of proof in establishing how granting these requests to maintain portions of an 8’ high solid wood fence and portions of an 8’ high rolling solid wood gate in the two 20’ visibility triangles on both sides of the driveway into the site from Concho Street, and indicating portions of an 8’ high solid wood fence located in the 20’ visibility triangle at where the alley meets Concho Street, do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items to be maintained in the 20’ drive approach visibility triangles into the site from Concho Street and in the 20’ visibility triangle where the alley meets Concho Street, to that what is shown on these documents – portions of an 8’ high solid wood fence and portions of an 8’ high rolling solid wood gate.

Timeline:

- March 21, 2019: 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 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 10, 2019: The Sustainable Development and Construction Department Senior Planner emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standards that the board will use in their decision to approve or deny the requests; and
 - The Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 7, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- May 9, 2019: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.

BOARD OF ADJUSTMENT ACTION: May 22, 2019

APPEARING IN FAVOR: William Crowell, 5947 Mercedes Ave., Dallas, TX 75206

APPEARING IN OPPOSITION: No one

MOTION 1 of 2: Beikman

I move that the Board of Adjustment, in Appeal No. BDA 189-057, on application of William R. Crowell, Sr., represented by Daniel Dodds, **grant** the request to maintain items in the visibility triangle at the driveway approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code, as amended:

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

SECONDED: Hampton

AYES: 5 - Hounsel, Beikman, Hampton, Milliken, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (Unanimously)

Motion 2 of 2: Beikman

I move that the Board of Adjustment, in Appeal No. BDA 189-057, on application of William R. Crowell, Sr., represented by Daniel Dodds, **grant** the request to maintain items in the visibility triangle at the alley approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code, as amended:

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

SECONDED: Hampton

AYES: 5 - Hounsel, Beikman, Hampton, Milliken, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (Unanimously)

FILE NUMBER: BDA189-062(OA)

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the fence standards regulations at 8258 San Fernando Way. This property is more fully described as Lot 14, Block 9/5260, and is zoned PD 575 (Subdistrict 1), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain an 11 foot 8 inch high fence in a required front yard, which will require a 7 foot 8 inch special exception to the fence standards regulations.

LOCATION: 8258 San Fernando Way

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a special exception to the fence standards regulations related to height of 7' 8" is made to remodel, construct and maintain a 4' rail medal fence with 7' 2" stone fence columns with decorative lighting, 4' 6" metal posts and an 11' 8" arbor in the required front yard on a site developed with a single-family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards regulations 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.

Zoning:

Site: PD 575 (Subdistrict I) (Planned Development)
North: PD 575 (Subdistrict I) (Planned Development)
South: PD 575 (Subdistrict C) (Planned Development)
East: PD 575 (Subdistrict E) (Planned Development)
West: PD 575 (Subdistrict I) (Planned Development)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the fence standards regulations related to height of 7' 8" focuses on constructing and maintaining a 4' rail medal fence with 6' 5" stone fence columns with decorative lighting, 4'6" metal posts and an 11' 8" arbor in the required front yard on a site developed with a single-family home.
- The property is located in PD 575 (Subdistrict I) zoning district which requires a minimum front yard setback of 80 feet.
- The subject site is located at the southwest corner of San Fernando Way and Breezewood Drive. This site has one front yard setback on San Fernando Way.
- Section 51A-4.602(a) (2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant submitted a site plan/elevation of the proposal in the front yard setbacks with notations indicating that the proposal reaches a maximum height of 11' 8".
- The following additional information was gleaned from the submitted site plan/elevation:
 - The proposal is represented as being approximately 150' in length parallel to San Fernando Way and approximately 80' perpendicular to San Fernando Way on the northwest and the northeast sides of the site in this front yard setback.
 - The proposal is represented as being located approximately at the front property line or approximately 22' from the pavement line.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and noted no other fences that appear to be above 4' in height located in a front yard setback.
- As of May 10, 2019, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of 7' 8" will not adversely affect neighboring property.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 7' 8" in height to be located in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on this document.

Timeline:

March 22, 2019: 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 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 10, 2019: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

May 7, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: May 22, 2019

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

APPEARING IN OPPOSITION: No one

MOTION: Hampton

I move that the Board of Adjustment in Appeal No. BDA 189-062 hold this matter under advisement until June 19, 2019.

SECONDED: Beikman

AYES: 5 - Hounsel, Beikman, Hampton, Milliken, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-063(OA)

BUILDING OFFICIAL'S REPORT: Application of Enoch Correa for a special exception to the fence standards regulations at 9727 Audubon Place. This property is more fully described as Lot 11A, Block 14/5587, 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 a 10 foot high fence in a required front yard, which will require a 6 foot special exception to the fence standards regulations.

LOCATION: 9727 Audubon Place

APPLICANT: Enoch Correa

REQUEST:

A request for a special exception to the fence standards regulations related to height of 6' is made to replace an existing approximately 4' high open iron fence that spans approximately 1/3 the length of the subject site located in the site's two required front yards (Audubon Place) and to construct and maintain an 8' high iron fence with masonry columns and a 10' high open iron gate that would span approximately 1/3 the length of the site's two required front yards (Audubon Place) on a site developed with a single family home.

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, south, and west are developed with single-family uses; and the area to the east is developed with public school use.

Zoning/BDA History:

1. BDA 123-053, Property at 9727 Audubon Place (the subject site)

On June 19, 2013, the Board of Adjustment Panel B denied the requests for a fence height special exception of 6' without prejudice. The case report stated that a special exception to the fence height regulations of 6' was requested to replace an existing 4' high open iron fence that spans approximately half the length of the subject site located in the site's 40' Audubon Place front yard setback with an 8' high open iron fence and columns with 10' high open iron gate/ entry columns that would span across the entire length of the site's Audubon Place front yard setback and to construct and maintain an 8' high open iron fence in the site's Park Lane frontage where there is currently no fence.

2. BDA 089-116, Property at 9727 Audubon Place (the subject site)

On October 21, 2009, the Board of Adjustment Panel B denied the requests for an additional dwelling unit on the property and a fence height special exception of 4' without prejudice. The case report stated that a special exception to the fence height regulations of 4' was requested in conjunction with replacing an existing approximately 4' high open iron fence that spans approximately half the length of the subject site and located in the site's 40' Audubon Place front yard setback with a 6' high open iron fence with an 8' high open iron gate/stone entry columns flanked by 4' long, 6' – 7' 6" high stone wing walls that would span across the entire length of the site and be located in the site's two 40' Audubon Place and Park Lane front yard setbacks; and a special exception to the single-family regulations was requested in conjunction with constructing and maintaining two-story, additional dwelling unit/"guesthouse/pool house" structure that would have (according to submitted plans) approximately 2,300 square feet "under roof" that would attach to the existing two-story single family home on the site that has

(according to DCAD) 13,002 square feet of living area. The minutes of this hearing stated that the Board Administrator circulated an October 21st email from the applicant to the board members at the morning briefing – an email where the applicant requested that the board deny his requests without prejudice.

3. BDA 012-237, Property at 9727 Audubon Place (the subject site)

On September 9, 2002, the applicant withdrew a request for a fence height special exception of 2' 6" that had been randomly assigned to Board of Adjustment Panel B.

4. BDA 956-163, Property at 9769 Audubon Place (the lot immediately north of the subject site)

On March 26, 1996, the Board of Adjustment Panel A granted a request for special exception to the fence height to maintain a maximum 6.5 foot high open metal fence with 7.5 foot high columns, and a special exception to maintain an additional dwelling unit on the property, subject to deed restricting the property to prevent the additional unit as rental accommodations.

5. BDA 967-313, Property at 9762 Audubon Place (three lots northeast of the subject site)

On October 28, 1997, the Board of Adjustment Panel A granted a request for special exception to the fence height regulations to maintain a 6 foot 6 inch high fence with 6 foot 10 inch high columns, and a 9 foot 6 inch high entry gate/columns, and imposed the following conditions: Compliance with the submitted site/landscape/elevation plan is required. The case report stated that the request was made in conjunction with constructing and maintaining a 6.6' open iron fence and 10 9.5' high solid iron columns (including decorative lights) in the Audubon Place front yard setback.

6. BDA 023-084, Property at 4800 Park Lane (the lot immediately south of the subject site)

On June 16, 2003, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 2' 10" and imposed the following conditions: Compliance with the submitted site/landscape plan and fence elevation is required. The case report stated that the request was made in conjunction with constructing and maintaining a maximum 6' 10" high cast iron fence with "brick underpinning;" maximum 6' 10" brick columns; and two maximum 6' 10" high cast iron gates at the two ingress/egress points

on the eastern and western ends of the estate.

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the fence height of 6' focuses on replacing an existing approximately 4' high open iron fence that spans approximately 1/3 the length of the subject site located in the site's two required front yards (Audubon Place) and constructing and maintaining an 8' high iron fence with masonry columns and a 10' high open iron gate that would span approximately 1/3 the length of the site's two required front yards (Audubon Place) on a site developed with a single family home.
- The subject site is located at the north corner of Park Lane and Audubon Place. Regardless of how the existing single-family structure is oriented to Audubon Place, the subject site has 40' front yard setbacks along both streets. The site has a 40' front yard setback along Park Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 40' front yard setback along Audubon Place, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 9' fence can be constructed and maintained by right. But the site's Audubon Place frontage is deemed a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes northeast of the site that front/are oriented southeastward onto Audubon Place.
- 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.
- No part of the application is made to address any fence in the site's Park Lane required front yard.
- The applicant has submitted a site plan and elevation indicating a fence/column/gate proposal that would be located in the site's two 40' front yard setbacks along Audubon Place and would reach a maximum height of 10'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 120' in length parallel to Audubon Place and approximately 40' perpendicular to Audubon Place on the east and west sides of the site in this front yard setback.
 - The proposed fence is shown to be located at approximate distances of 5' – 25' from the front property lines or at approximate distances of about 25'- 40' from the "street edge."
 - The proposed gate is shown to be located at an approximate distance of 20' – 25' from the front property lines or at approximate distances of about 35' – 40' from the "street edge."
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area and noted several other fences that appeared to be above 4' in height along Audubon Drive and Park Lane located in the front yard setbacks, some of which have recorded BDA history (see the Zoning/BDA History section of this case report for details).

- As of May 10, 2019, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height over 6' in the front yard setback will not adversely affect neighboring property.
- Granting this special exception of 6' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height to be constructed and maintained in the location and of the heights as shown on these documents.

Timeline:

March 25, 2019: 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 8, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. 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 9, 2019: The Sustainable Development and Construction Department Senior Planner, emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

May 7, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: May 22, 2019

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment, in Appeal No. BDA 189-063, on application of Enoch Correa, for a special exception to the fence height regulations contained in the Dallas Development Code, is **granted**, subject to the following condition:

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

SECONDED: Hampton

AYES: 5 - Hounsel, Beikman, Hampton, Milliken, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

2:00 P.M. Board Meeting adjourned for **May 22, 2019**

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.