

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, AUDITORIUM
MONDAY, JUNE 22, 2015**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Danielle Jimenez, Planner, David Lam, Engineer, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Danielle Jimenez, Planner, David Lam, Engineer, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

11:06 a.m. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 22, 2015** docket.

1:05 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C May 18, 2015 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 22, 2015

MOTION: None

The minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 145-021

REQUEST: To waive the two year limitation on a final decision reached by Board of Adjustment Panel C on March 16, 2015 - a request for a special exception to the fence height regulations that was granted with certain conditions.

LOCATION: 4606 Walnut Hill Lane

APPLICANT: Jimmy Baugh
Represented by Robert Reeves of Robert Reeves and Associates

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS/TIMELINE:

March 16, 2015: The Board of Adjustment Panel C granted a request for special exception to the fence height regulations of 4' 6" and imposed the following condition to this request: Compliance with the submitted revised site plan, conceptual/landscape plan, and elevation is required. The case report stated that the request was made to construct/maintain construct and maintain a 7' high "wall faced with Lueders limestone" with 7' 6" high columns, and an approximately 6' – 7' high gate flanked with 8' 6" high entry columns on a site developed with a single family home. (See Attachment A for information related to this application).

June 1, 2015: The applicant's representative submitted a letter (with related materials) to staff requesting that the Board waive the two year limitation on the request for a special exception to the fence height regulations granted by Board of Adjustment Panel C on March 16, 2015 (see Attachment B). This miscellaneous item request to waive the two year limitation was made in order for the applicant to file a new application for a fence height special exception on the property.

Note that The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
- If the board renders a final decision of denial without prejudice, the two year limitation is waived.
- The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.

June 2, 2015: The Board Administrator emailed the applicant's representative information regarding his miscellaneous item request (see Attachment C).

BOARD OF ADJUSTMENT ACTION: JUNE 22, 2015

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

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment waive the two year limitation on a final decision reached by Board of Adjustment Panel C on March 16, 2015 - a request for a special exception to the fence height regulations that was granted with certain conditions.

SECONDED: **Carreon**

AYES: 4 –Coulter, Carreon, Schulte, Beikman

NAYS: 1 - Richardson
MOTION PASSED: 4 – 1

FILE NUMBER: BDA 145-065

BUILDING OFFICIAL’S REPORT: Application of Alba M. Nunez for special exceptions to the fence height and visual obstruction regulations at 4540 Northaven Road. This property is more fully described as Lot 9, Block C/6400, and is zoned R-1/2ac(A), which limits the height of a fence in the front yard to 4 feet and requires 20 foot visibility triangles at driveway approaches. The applicant proposes to construct and/or maintain a 9 foot 9 inch high fence in a required front yard, which will require a 5 foot 9 inch special exception to the fence height regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 4540 Northaven Road

APPLICANT: Alba M. Nunez

REQUESTS:

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

1. A request for a special exception to the fence height regulations of 5’ 9” is made to maintain an arching stucco fence ranging in height from 4’ – 4’ 6”, two arched wooden gate vehicular gates ranging in height from 4’ – 6’ 2”, and a pedestrian entryway that includes a 9’ 9” high archway flanked by stucco walls ranging in height from 5’ 8” downward to 4’ 6”.
2. Requests for special exceptions to the visual obstruction regulations are made to maintain four, 4’ 6” high stucco columns in the two 20’ visibility triangles on both sides of the circle driveway into the site from Northaven Road.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION (fence height):

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.

STAFF RECOMMENDATION (visual obstruction):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer had indicated that he has no objections to the requests commenting “no existing sidewalks installed at the time of this request.”
- The applicant had substantiated how the location and maintenance of four, 4’ 6” high stucco columns in the two 20’ visibility triangles on both sides of the circle driveway into the site from Northaven Road do not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

- Site: R-1/2ac(A) (Single family district 1/2 acre)
- North: R-1/2ac(A) (Single family district 1/2 acre)
- South: R-1/2ac(A) (Single family district 1/2 acre)
- East: R-1/2ac(A)(NSO 1) (Single family district 1/2 acre)(Neighborhood Stabilization Overlay)
- West: R-1/2ac(A) (Single family district 1/2 acre)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (fence height):

- This request focuses on maintaining an arching stucco fence ranging in height from 4’ – 4’ 6”, two arched wooden gate vehicular gates ranging in height from 4’ – 6’ 2”, and a pedestrian entryway that includes a 9’ 9” high archway flanked by stucco walls

ranging in height from 5' 8" downward to 4' 6" on a site developed with a single family home.

- 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 site is zoned R-1/ac Single Family Residential District which requires a minimum front yard setback of 40'.
- While the property is located at the southwest corner of Northaven Road and Welch Road, it has only one front yard setback along Northaven Road.
- The applicant has submitted a site plan and an elevation of the proposal in the front yard setback that reaches a maximum height of 9' 9".
- The following additional information was gleaned from the submitted site plan:
 - The portion of the fence that exceeds 4' in height on the subject site with about 120' of frontage is about 70' in length.
 - The fence/gates over 4' in height in the front yard setback are located approximately on the property line or 15' from the pavement line.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4 feet high which appeared to be located in a front yard setback.
- One home fronts the proposal – a property with no fence in its front yard setback.
- As of June 15th, 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 height regulations of 5' 9" will not adversely affect neighboring property.
- Granting this special exception of 5' 9" 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 to be maintained in the location and of the heights and materials as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction):

- These requests focus on maintaining four, 4' 6" high stucco columns in the two 20' visibility triangles on both sides of the circle driveway into the site from Northaven Road.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant has submitted a site plan and an elevation denoting four columns located in the 20' visibility triangles at the two drive approaches into the site from Northaven Road.

- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections” with the following additional comment: “No existing sidewalks installed at the time of this request.”
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain four, 4’ 6” high stucco columns in the two 20’ visibility triangles on both sides of the two driveways into the site from Northaven Road does not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the submitted site plan and elevation would require the items in the visibility triangles to be limited to and maintained in the locations, height and materials as shown on these documents.

Timeline:

- April 13, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 12, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 13, 2015: The Board Administrator contacted the applicant and emailed her 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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12th 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.”
- June 9, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 11, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections” with the following additional comment: “No existing sidewalks installed at the time of this request.”

BOARD OF ADJUSTMENT ACTION: JUNE 22, 2015

APPEARING IN FAVOR: Ramon Nunez, 4540 Northaven Rd., Dallas, TX

APPEARING IN OPPOSITION: Martha and Craig Burkert, 4530 Northaven, Dallas TX

MOTION #1: Beikman

I move that the Board of Adjustment, in request **No. BDA 145-065**, on application of Alba M. Nunez, **grant** the request to maintain items in visibility triangles at the west gate and east gate, as a special exception to the visual obstruction regulation in the Dallas Development Code 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Schulte

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Coulter

I move that the Board of Adjustment, in request **No. BDA 145-065**, on application of Alba M. Nunez, **deny** the special exception to the fence height regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Beikman

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-063

BUILDING OFFICIAL’S REPORT: Application of Ed Simons for variances to the front yard setback and minimum sidewalk regulations, and a special exception to the landscaping requirements at 1712 Commerce Street. This property is more fully described as Block 136/97-1/4, and is zoned PD-619 (Subdistricts A, B, & C), which

requires a front yard setback of 10 feet from the street curb per the SP Secondary Pedestrian Precinct overlay in Section 51A-4.124(a)(8), and requires mandatory minimum sidewalks and landscaping. The applicant proposes to construct and/or maintain a structure and provide 5 foot front yard setbacks, which will require 5 foot variances to the front yard setback regulations, provide an alternate sidewalk plan, which will require variances to the minimum sidewalk regulations, and provide an alternate landscape plan, which will require a special exception to the landscaping requirements.

LOCATION: 1712 Commerce Street

APPLICANT: Ed Simons

REQUESTS:

The following requests have been made on a site that is in part developed with two multi-story office structures that the applicant intends to convert to two hotels, and in part developed with a surface parking lot that the applicant intends to develop with a ten-level parking garage for use by the hotels:

1. Requests for variances of up to 5' to the required minimum 10' foot setback measured from the street curb are made to construct and maintain the aforementioned ten-level parking garage to be located as close as 5' from the S. Ervay Street, Jackson Street, and Prather Street curb lines or as much 5' into these 10' required front yard setbacks;
2. Requests for variances to the minimum sidewalk regulations are made to construct and maintain the aforementioned ten-level parking garage and provide sidewalks along S. Ervay Street, Jackson Street, and Prather Street at a minimum 5' width when an average minimum sidewalk width of 15 feet and a minimum of width of 9' are required.
3. A request for a special exception to the landscaping requirements is made to construct and maintain the aforementioned ten-level parking garage, and not fully provide the landscaping regulations required for commercial parking garages and surface parking lots in the PD 619/CA-1 zoning districts.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPING REQUIREMENTS FOR COMMERCIAL PARKING GARAGES AND SURFACE PARKING LOTS IN PD 619/CA-1(A) ZONING:

The board may grant a special exception to the landscaping requirements for commercial parking garages and surface parking lots in PD 619/CA-1(A) zoning if the board finds, after a public hearing, the special exception will not adversely affect the other properties within the subdistrict and strict compliance with the requirement would result in unnecessary hardship. If the Board grants a special exception, it must specify the length of time the special exception is effective.

STAFF RECOMMENDATION (variances):

Hold under advisement

Rationale:

- The applicant has indicated they desire to submit additional information on these requests.

STAFF RECOMMENDATION (landscaping special exception):

Hold under advisement

Rationale:

- The applicant has indicated they desire to submit additional information on this request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 619 (Subdistricts A, B, &C) (Planned Development District)
North: PD 619 (Subdistricts A, B, &C) (Planned Development District)
South: CA-1 (Central Area)
East: PD 619 (Subdistricts A, B, &C) (Planned Development District)
West: PD 619 (Subdistricts A, B, &C) (Planned Development District)

Land Use:

The subject site is in part developed with two multi-story office structures, and in part developed with a surface parking lot. The areas to the north, east, and west are developed with a mix of retail, office, and residential uses; and the area to the south is developed with a surface parking lot.

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 (front yard variances):

- This request focuses on constructing and maintaining a ten-level parking garage on the subject site to be located 5' from the S. Ervay Street, Jackson Street, and Prather Street curb lines or 5' into these 10' required front yard setbacks.
- The subject site is located in PD 619 (Subdistricts A, B, and C) where yard regulations contained in CA-1(A) and where SP Secondary Pedestrian Precinct overlays apply.
- The Dallas Development Code states that lots located within a CA -1(A)-SP zoning district are required to provide a 10' setback measured from the street curb.
- A revised site plan has been submitted that indicates a structure as close as 5' from the S. Ervay Street, Jackson Street, and/or Prather Street curb lines or as much 5' into these 10' required front yard setbacks.
- While the revised site plan indicates that a portion of the existing structures on the site do not comply with the required front yard setback, the applicant has stated that his application is only focused on the new parking garage structure and not to remedy any aspect of nonconforming structures on the subject site.
- According to DCAD records, the "improvements" at 1712 Commerce Street is an "office building" that is 190,271 square feet in area built in 1956 and at 1700 Commerce Street is office building that is 132,218 square feet in area built in 1926.
- The two existing structures on the block are contributing structures to the Downtown Dallas National Register of Historic Places, one of which is currently going through local designation process (1700 Commerce Street, constructed in 1925).
- The proposed development on the request site, a 10 story parking garage, is being developed to support the rehabilitation of the two existing structures on the block.
- The subject site is flat, rectangular in shape, and is according to the application, 0.93 acres (or approximately 40,500 square feet) in area. The site is zoned PD 619 (Subdistricts A, B, and C). The site has three, 10' front yard setbacks which is typical of any lot that with three street frontages that is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 619 zoning classification.
- The variances would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 (LC) zoning classification.
- If the Board were to grant the variance requests and impose the submitted revised site plan as a condition, the structure in the front yard setbacks would be limited to what is shown on this document where portions of the parking garage structure is located as close as 5' into the required 10' front yard setbacks.

GENERAL FACTS/STAFF ANALYSIS (sidewalk variances):

- This request focuses on constructing and maintaining a ten-level parking garage on the subject site and providing 5' wide sidewalks along S. Ervay Street, Jackson Street, and Prather Street when an average minimum sidewalk width of 15' and a minimum of width of 9' is required.
- The subject site is located in PD 619 (Subdistricts A, B, and C) where additional provisions applicable to CA-1(A) and where SP Secondary Pedestrian Precinct overlays apply.
- The Dallas Development Code states certain sidewalk regulations for properties within CA -1(A)-SP zoning district, specifically that a building with a floor area ratio of 15 to one or less must have an average sidewalk of 15 feet and a minimum sidewalk width of 9 feet that is unobstructed by any structure or planting.
- A revised site plan has been submitted that indicates sidewalks along S. Ervay Street, Jackson Street, and Prather Street at a minimum 5' width.
- While the revised site plan indicates that sidewalks around the existing structures on the site do not comply with the sidewalk regulations, the applicant has stated that his application is only focused on sidewalks around the new parking garage structure and not to remedy any aspect of nonconforming sidewalks around the existing structures on the subject site.
- According to DCAD records, the "improvements" at 1712 Commerce Street is an "office building" that is 190,271 square feet in area built in 1956 and at 1700 Commerce Street is office building that is 132,218 square feet in area built in 1926.
- The two existing structures on the block are contributing structures to the Downtown Dallas National Register of Historic Places, one of which is currently going through local designation process (1700 Commerce Street, constructed in 1925).
- The proposed development on the request site, a 10 story parking garage, is being developed to support the rehabilitation of the two existing structures on the block.
- The subject site is flat, rectangular in shape, and is according to the application, 0.93 acres (or approximately 40,500 square feet) in area. The site is zoned PD 619 (Subdistricts A, B, and C). The site has three, 10' front yard setbacks which is typical

of any lot that with three street frontages that is not zoned single family, duplex, or agricultural.

- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the minimum sidewalk regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 619 zoning classification.
 - The variances would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 619 zoning classification.
- If the Board were to grant the variance requests and impose the submitted revised site plan, the width of the sidewalks on the subject site would be limited to what is shown on this document where sidewalks along S. Ervay Street, Jackson Street, and Prather Street at a minimum 5' width.

GENERAL FACTS/STAFF ANALYSIS (landscaping special exception):

- This request focuses on constructing and maintaining the aforementioned ten-level parking garage, and not fully providing the landscaping regulations required for commercial parking garages and surface parking lots in the PD 619/CA-1 zoning districts.
- The City of Dallas Chief Arborist had submitted a memo regarding this request to the Board Administrator (see Attachment E). The memo stated among other things how the request is triggered by new construction of a commercial parking garage.
- The City of Dallas Chief Arborist's memo identifies that the deficiencies in this case are: 1) that tree grates are required for all trees planted in a public sidewalk where the applicant is proposing trees situated in an open planting bed, and 2) that shrubs are required to be a minimum of 30" in height where the applicant is proposing 18" shrubs.
- The City of Dallas Chief Arborist's memo lists several factors for consideration:
 - The district regulations state the following: "Alternate landscape plan. The director may approve an alternative landscape plan only if compliance with this paragraph is not possible, the inability to comply is not self-created, and the alternative landscape plan is in keeping with the intent of this paragraph. An alternative landscape plan may include the placement of landscaping in alternative locations. An alternative landscape plan may reduce the square footage of landscape area if additional trees or shrubs are provided."
 - An alternative landscape plan has not been submitted to the director under a parkway landscape permit review to determine if the plan may be approved under standard conditions. It has not been proven whether the site with or

without the variances is unable to comply with the requirements of one tree or shrub in the adjoining parkway for each 30 feet of frontage.

- Planting conditions in this ordinance for shrubs can vary from planting conditions for trees which require tree grates. Various methods can be used to create soil conditions for different plant types, including engineered solutions or smaller linear planting beds. The ordinance provides for significant variability in plant type, size, form, location, and species to allow maximum flexibility to designers.
- There is no effective time period request from the applicant for the duration of the alternate landscape plan.
- Landscaping shown facing Commerce Street is not part of this application for the commercial parking garage structure.
- The applicant has the burden of proof in establishing that the special exception will not adversely affect the other properties within the subdistrict and strict compliance with the requirement would result in unnecessary hardship.
- If the Board grants a special exception, it must specify the length of time the special exception is effective.
- If the Board was to grant this request and impose the submitted alternate landscape plan as a condition, the subject site would be provided exception from full compliance with the landscaping regulations required for commercial parking garages and surface parking lots in the PD 619/CA-1 zoning districts.

Timeline:

April 1, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 12, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 13, 2015: 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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12th 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

June 2, 4, 5 & 8, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B, C, and D).

June 9, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 11, 2015: The Sustainable Development Project Engineer has submitted a review comment sheet marked “recommends that this be denied” commenting Due to proximity to City Hall, Convention Center, Main Street Garden Park, and restaurant/retail along Commerce and Main Streets, sidewalk widths as prescribed by PD 619 is warranted. Vehicular traffic will increase with construction of garage and will result in increase of pedestrian traffic with hotel use. Recommendation of denial based on coordination with Thoroughfare Planning and Urban Design Group.”

June 12, 2015: The City of Dallas Chief Arborist submitted a memo regarding the request for a special exception to the landscaping requirements (see Attachment E).

BOARD OF ADJUSTMENT ACTION: JUNE 22, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment in Appeal No. **BDA 145-063** hold this matter under advisement until **August 24, 2015**.

SECONDED: **Beikman**

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-067

BUILDING OFFICIAL'S REPORT: Application of Laura Hoffman for a special exception to the fence height regulations at 10121 Waller Drive. This property is more fully described as Lot 4, Block C/5517, 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 an 8 foot 7 inch high fence in a required front yard, which will require a 4 foot 7 inch special exception to the fence regulation.

LOCATION: 10121 Waller Drive

APPLICANT: Laura Hoffman, Winstead PC

REQUEST:

The following request for a special exception has been made on a site that is developed with a single family home/use:

1. A request for a special exception to the fence height regulations of 4' 7" is made to construct a 5' 3" high open, wrought iron fence with 6' 2" high stucco columns, and an arched 8' 7" high, approximately 18' wide, open, wrought iron gate, parallel and perpendicular to the street in the required 40' front yard along Waller Drive.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION (FENCE HEIGHT):

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:

<u>Site:</u>	R-1ac(A) (Single Family Residential District 1 Acre)
<u>North:</u>	R-1ac(A) (Single Family Residential District 1 Acre)
<u>South:</u>	R-1ac(A) (Single Family Residential District 1 Acre)
<u>East:</u>	R-1ac(A) (Single Family Residential District 1 Acre)
<u>West:</u>	R-1ac(A) (Single Family Residential District 1 Acre)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (FENCE HEIGHT):

- This request focuses on constructing a 5' 3" high open, wrought iron fence with 6' 2" high stucco columns, and an arched 8' 7" high, approximately 18' wide, open, wrought iron gate, parallel and perpendicular to Waller Drive, in the 40' required front yard on a site developed with a single family home/use.
- 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.
- An R-1ac(A) Single Family Residential District requires the minimum front yard setback to be 40'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 157' in length parallel to Waller Drive.
 - ...The open, wrought iron fence will extend approximately 39' in length into the 40' required front yard.
 - The proposal is represented as being located approximately 12' from the pavement line.
 - The fence is represented as being located approximately 1' from the property line, and the entry gate is represented as being located approximately 9' from the property line.
- The Current Planner conducted a field visit of the site and surrounding area and noted no other visible fences above 4 feet in height which appeared to be located in a front yard setback.
- One home fronts the proposal.

- As of June 12th, one (1) letter has been submitted in support of the request, ten (10) letters have been submitted in opposition to the request, and two (2) letters have been submitted not opposing the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 7" will not adversely affect neighboring property.
- Granting this special exception of 4' 7" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' 7" in height in the front yard setback to be maintained in the location and of the heights and materials shown on these documents.

Timeline:

April 22, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 12, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 15, 2015: The Current Planner shared the following information with the applicant via e-mail:

- 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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12th 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.

June 9, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: JUNE 22, 2015

APPEARING IN FAVOR: Kirk Williams, 6768 N Harwood, Dallas, TX
Marvin Ellison, 10121 Waller Dr., Dallas, TX

APPEARING IN OPPOSITION: Tim Durst, 10115 Waller Dr., Dallas, TX

***Members Peter Schulte and Marla Beikman recused themselves and did not hear or vote on this matter.**

MOTION: Carreon

I move that the Board of Adjustment in Appeal No. **BDA 145-067** hold this matter under advisement until **August 24, 2015**.

SECONDED: Coulter

AYES: 3 – Richardson, Coulter, Carreon

NAYS: *

MOTION PASSED: 3 – 0

***RECUSED: 2 - Schulte, Beikman**

MOTION: Richardson

I move to adjourn this meeting.

SECONDED: Coulter

AYES: 3 – Richardson, Coulter, Carreon

NAYS: *

MOTION PASSED: 3 - 0

***RECUSED: 2 - Schulte, Beikman**

3:45 P. M. - Board Meeting adjourned for June 22, 2015.

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.