

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL COUNCIL CHAMBERS
WEDNESDAY, June 24, 2020**

MEMBERS PRESENT AT BRIEFING: Michael Schwartz, chair, Damian Williams, regular member, Catrina Johnson, regular member, John Jones, alternate member and Jared Slade, alternate member

MEMBERS ABSENT FROM BRIEFING: Matthew Vermillion, regular member

MEMBERS PRESENT AT HEARING: Michael Schwartz, chair, Damian Williams, regular member, Catrina Johnson, regular member, John Jones, alternate member and Jared Slade, alternate member

MEMBERS ABSENT FROM HEARING: Matthew Vermillion, regular member

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Attorney, David Nevarez, Senior Engineer, Charles Trammell, Development Code Specialist, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, Sarah May, Chief Planner, Phil Erwin, Chief Arborist, Neva Dean, Assistant Director

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Attorney, David Nevarez, Senior Engineer, Charles Trammell, Development Code Specialist, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, Sarah May, Chief Planner, Phil Erwin, Chief Arborist, Neva Dean, Assistant Director

10:22 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 24, 2020 docket.**

BOARD OF ADJUSTMENT ACTION: June 24, 2020

1:03 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 B, May 20, 2020 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: June 24, 2020

MOTION: Slade

Approval of the Board of Adjustment Panel B, May 20, 2020 public hearing minutes.

SECONDED: Jones

AYES: 5 – Schwartz, Slade, Williams, Jones, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190--FEE WAIVER

BUILDING OFFICIAL'S REPORT: Application of Jeff Saba and Kristen Mitchell for a fee waiver for special exceptions to the fence height and standards regulations at 6749 Hillbriar Drive.

LOCATION: 6749 Hillbriar Drive

APPLICANT: Jeff Saba and Kristen Mitchell

REQUESTS:

The applicant is requesting a fee waiver for the two special exceptions needed to maintain an existing fence in the required front yard on Hillbriar Drive.

STANDARD FOR A FEE WAIVER:

Section 51A-1.105(b)(6) of the Dallas Development Code specifies the board of adjustment may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant. The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination. If the issue is placed

on the miscellaneous docket, the applicant may not file the application until the merits of the request for waiver have been determined by the board. In making this determination, the board may require the production of financial documents.

STAFF RECOMMENDATION:

Staff does not make a recommendation on a fee waiver request since the standard is whether the board finds that payment of the fee would result in substantial financial hardship to the applicant.

BOARD OF ADJUSTMENT ACTION: June 24, 2020

APPEARING IN FAVOR: Jeff Saba 6749 Hillbriar Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment **grant** the request to waive the filing fees to be paid in association with a request for special exceptions to the fence height regulations and the fence standards regulations at 6749 Hillbriar Drive because our evaluation of the property and the testimony shows that payment of the fee would result in substantial financial hardship to the applicant.

SECONDED: Williams

AYES: 5 - Schwartz, Slade, Jones, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA190-042(OA)

BUILDING OFFICIAL’S REPORT: Application of Luke Gardner for a special exception to the fence height regulations at 4523 Park Lane. This property is more fully described as Lot 3A.1, Block C/5546, and is zoned an R-10(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct and maintain a seven-foot-high fence in a required front yard, which will require a three-foot special exception to the fence regulations.

LOCATION: 4523 Park Lane

APPLICANT: Luke Gardner

REQUEST:

A request for a special exception to the fence standards regulations related to height of three feet is made to construct and maintain a seven-foot solid cinderblock fence with a

seven-foot wood veneer with a polished iron gate in the required front yard 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-10(A) (Single Family District)
North: R-10(A) (Single Family District)
East: R-10(A) (Single Family District)
South: R-10(A) (Single Family District)
West: R-10(A) (Single Family District)

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 and vacant lots.

Zoning/BDA History:

There have not been any related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The request for a special exception to the fence height regulations focuses on constructing and maintaining a seven-foot solid cinderblock fence with a seven-foot wood veneer and a polished iron gate in the site's front yard. The property is developed with a single family home.

The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The subject site is zoned R-10 (A) which requires a 30-foot front yard setback.

According to the site plan submitted, the fence is represented as being 70 feet-in-length parallel to the street and approximately 12 feet perpendicular to the street on the sides in this required front yard, located on the front property line or approximately 30 feet from the pavement line.

Staff conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and noted two other fences that appear to be above four feet-in-height and located in a front yard setback.

As of June 12, 2020, one letter has been submitted in support and no letters in opposition to this request.

The applicant has the burden of proof in establishing that the special exception to the fence standards related to the height of three feet 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 four feet-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:

February 4, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

March 17, 2020: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

March 23, 2020: 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 April 28th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th 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.

June 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included the following: the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, 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: June 24, 2020

APPEARING IN FAVOR: Luke Gardner 8400 Ambassador Row Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Jones

I move that the Board of Adjustment, in Appeal No. BDA 190-042, on application of Luke Gardner, **grant** the request for a special exception to fence height regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan/elevation is required.

SECONDED: Williams

AYES: 5 - Schwartz, Slade, Jones, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-051(OA)

BUILDING OFFICIAL’S REPORT: Application of Brett Merz represented by Andy Harcar for a special exception to the landscape regulations at 4514 Cole Avenue. This property is more fully described as Lots 13-16, Block K/1535, and is zoned PD 193 (LC), which requires mandatory landscaping. The applicant proposes to construct and/ maintain a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 4514 Cole Avenue

**APPLICANT: Brett Merz
represented by Andy Harcar**

REQUESTS:

A request for a special exception to the landscape regulations is made to construct and maintain a patio on a site that is currently developed with a nonresidential sturcutere, and not to fully provide the required landscaping. More specifically, the request includes (1) to relocate required sidewalks outside of the required zone of five-t-12 feet from back of curb, and (2) to locate street trees outside of the two-and-a-half to five-feet from the back of curb zone on Hudnall Street. The applicant is seeking a special exception to the landscaping requirements of PD 193 Part 1, as established for LC Subdistricts. The proposed construction of a new exterior patio with a small increase of impervious surface will require compliance with PD 193 (LC) landscape requirements. The alternate landscape plan provides no trees in the required tree planting zone.

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the special exception on the basis that it does not appear the request will compromise the spirit and intent of this ordinance.

BACKGROUND INFORMATION

- Site:** PD 193 Part 1 (Planned Development)
- North:** PD 193 Part 1 (Planned Development)
- South:** PD 193 (PDS141) (Planned Development)
- East:** PD 193 Part 1 (Planned Development)
- West:** PD 193 Part 1 (Planned Development)

Land Use:

The site developed with mixed uses. The areas to the north, east, and south and west are developed with retail, multifamily, and mixed 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 landscape regulations focuses on constructing and maintaining a patio on a site that is currently developed with a nonresidential structure, and not to fully provide the required landscaping. More specifically, the request includes (1) to relocate required sidewalks outside of the required zone of five-to-12 feet from back of curb, and (2) to locate street trees outside of the two-and-a-half to five-feet from the back of curb zone on Hudnall Street. The applicant is seeking a special exception to the landscaping requirements of PD 193 Part 1, as established for LC districts. The proposed construction of a new exterior patio with a small increase of impervious surface will require compliance with PD 193 (LC) landscape requirements. The alternate landscape plan provides no trees in the required tree planting zone.

PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A).

The Chief Arborist's memo states the following with regard to "request":

The applicant is seeking a special exception to the landscaping requirements of PD 193 Part 1, as established for LC districts. The proposed construction of a new exterior patio with a small increase of impervious surface will require compliance with PD 193 (LC) landscape requirements.

The Chief Arborist's memo states the following with regard to "provision":

The property was developed and constructed prior to the implementation of PD 193 regulations. The patio is the first construction to initiate landscape requirements under the ordinance. Existing landscaping with established mature trees provides a suitable environment for the use of the property.

The alternate landscape plan removes five established trees to make way for new pedestrian and vehicular ingress/egress points to the street and to provide the space for the patio improvements. The greater extent of existing landscaping will remain from the original landscape design.

The Chief Arborist's memo states the following with regard to "deficiencies":

PD 193 LC requires 10 percent landscape site area with 60 percent landscape area for the required front yard. A tree planting zone is required two-and-a-half to five feet from back of curb and a six-foot sidewalk. The sidewalk along Armstrong is placed along the street curb where it should be spaced five feet from curb by ordinance. The alternate landscape plan provides no trees in the tree planting zone. The property has significant landscape area along Armstrong but a driveway occupies to the property line along Cole. The large mature trees are in sufficient planting space but not in compliance with PD 193 for new landscapes.

The applicant has the burden of proof in establishing the following:

The special exception (providing no trees in the tree planting zone of the PD 193 landscape requirements) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards".

If the board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted an exception from full compliance to the requirements of the PD 193 landscape ordinance.

Timeline:

February 24, 2020: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.

March 17, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 23, 2020: March 23, 2020: 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 April 28th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th 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.

June 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January

public hearings. Review team members in attendance included the following: the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

April 2, 2019: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: June 24, 2020

APPEARING IN FAVOR: Andy Harcar 2001 Irving Blvd Dallas, TX.
Bryan McMath 350 N. St. Paul #100 Dallas, TX.
Zach Lynch 350 N. St. Paul #100 Dallas, TX.
Brett Merz 800 Newport Ctr Dr. #700 Newport Beach, CA.
Lisa Johnston 4514 Cole Ave. Dallas, TX.

APPEARING IN OPPOSITION: None

MOTION: Jones

I move that the Board of Adjustment, in Appeal No. BDA 190-051, on application of Brett Merz, represented by Andy Harcar of SWA Group, **grant** the request for a special exception to the landscape requirements contained in PD 193, subject to the following condition:

Compliance with the submitted alternate landscape plan is required.

SECONDED: Williams
AYES: 5 - Schwartz, Slade, Jones, Williams, Johnson
NAYS: 0
MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-060(OA)

BUILDING OFFICIAL’S REPORT: Application of James William Heathcott represented by Kevin Parma for a variance to the rear yard setback regulations at 5507 Bryan Street. This property is more fully described as Lot 4, Block 17/1871, and is zoned PD-63 (Area C), which requires a rear yard setback of 50 feet. The applicant proposes to construct a single-family residential structure and provide a 45-foot six-inch rear yard setback, which will require a four-foot six-inch variance to the rear yard setback regulations.

LOCATION: 5507 Bryan Street

APPLICANT: James William Heathcott represented by Kevin Parma

REQUESTS:

A request for a variance to the rear yard setback regulations of four-feet six-inches is made to add and maintain an attached covered rear patio to the existing single family structure 45-feet six-inches from the rear property line or up to four-feet six-inches into the required 50-foot rear yard setback on a site that is developed with a two-story residential structure.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of 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 (rear yard variance):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the PD No. 63 (Area C) zoning district by its restrictive area due to being irregular in shape and smaller in lot size than all of the six lots in PD No. 63 (Area C) zoning district that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same PD No. 63 (Area C) zoning district.

- The applicant submitted a document (Attachment A) indicating, among other things, that the proposed addition on the subject site is commensurate to 25 other lots located in the rear of the lot and in the same PD No. 63 zoning district.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 63 (Planned Development District)
North: R-7.5 (A) (Single Family District)
South: PD No. 63 (Planned Development District)
East: PD No. 63 (Planned Development District)
West: PD No. 63 (Planned Development District)

Land Use:

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

Zoning/BDA History:

There have not been any related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS (rear yard variance):

This request focuses on adding and maintaining an attached covered rear patio to the existing single family structure 45-feet six-inches from the rear property line or up to four-feet six-inches into the required 50-foot rear yard setback on a site that is developed with a two-story residential structure.

Structures on lots zoned PD No. 63 (Area C) are required to provide a rear yard setback of 50 feet. A site plan has been submitted denoting the proposed enclosed rear patio structure located structure 45-feet six-inches from the rear property line. The site plan shows that approximately 30 percent of the accessory structure will be located in the site's 50-foot rear yard setback.

The subject site is irregular in shape and smaller than the average lot within the PD No. 63 (Area C) with 11,900 square feet in area; however, the minimum lot size required by the PD is 7,500 square feet.

The applicant submitted a document (Attachment A) indicating, among other things, that the proposed attached covered rear patio structure on the subject site is commensurate to 25 other lots in the same PD No. 63 zoning district. Attachment A also notes the average lot

size of 25 lots in this district is 12,488 square feet while the subject lot is only 11,900 square feet.

The applicant has the burden of proof in establishing the following:

- That granting the variance to the rear 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 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 PD No. 63 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 PD No. 63 zoning classification.

If the board were to grant this rear yard setback variance request and impose the submitted site plan as a condition, the structures in the rear yard setback would be limited to what is shown on this document. Granting this special exception request will not provide any relief to the Dallas Development Code regulations other than for an attached covered rear patio to the existing single family structure to be 45-feet six-inches from the rear property line or up to four-feet six-inches into the required 50-foot rear yard setback on a site that is developed with a two-story residential structure.

Timeline:

March 19, 2020: 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 13, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 13, 2020: The Board of Adjustment Chief Planner/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 12, 2020 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 4, 2020: The applicant submitted additional evidence (Attachment A).

June 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Senior Engineer, the Board of Adjustment Senior Planner the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the board

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

BOARD OF ADJUSTMENT ACTION: June 24, 2020

APPEARING IN FAVOR: Ryan Winthrow 1712 S. Akard, Dallas, TX.
Kevin Parma 1712 S. Akard Dallas, TX.

APPEARING IN OPPOSITION: None

MOTION: Jones

I move that the Board of Adjustment, in Appeal No. BDA 190-060, on application of James William Heathcott, represented by Kevin Parma, **grant** the variance to the rear yard setback regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Williams

AYES: 5 - Schwartz, Slade, Jones, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-062(OA)

BUILDING OFFICIAL’S REPORT: Application of Mark D Massey represented by Angela Massey for special exceptions to the fence height regulations at 3 Rosalie Drive. This property is more fully described as Lot 3, Block 4/8711, and is zoned PD No. 226, which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct

and maintain a five-foot-high fence in a required front yard, which will require a one-foot special exception to the fence standards regulations.

LOCATION: 3 Rosalie Drive

APPLICANT: Mark D Massey
represented by Angela Massey

REQUESTS:

A request for a special exception to the fence height regulations of one foot is made to construct and maintain a fence higher than four feet-in-height in both front yard setbacks:

- a) Along Rosalie Drive: a five-foot wrought iron fence with a swing wrought iron gate; and
- b) Along Pleasant Ridge Drive: a five-foot wrought iron fence with a sliding wrought iron gate.

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 No 226 (Plan Development District)
- North: PD No 226 (Plan Development District)
- South: PD No 226 (Plan Development District)
- East: PD No 226 (Plan Development District)
- West: PD No 226 (Plan Development District))

Land Use:

The subject site is undeveloped. The areas to the north, south, east, 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:

The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.

The subject site is zoned PD No 226 which has a requires a 35-foot front yard setback.

The undeveloped site is located at the northeast corner of Rosalie Drive and Pleasant Ridge Drive. Given the curvature of the street and the street name changed after the curve the subject site has one required front yard with two different street names. The Sustainable Development and Construction Department Senior Engineer has provided a statement (Attachment B) regarding the proposed fence along the curved lot, noting:

- Engineering has no objections with the proposed fence based on our evaluation of proposed conditions if enough space is dedicated for any future sidewalk.
- Any proposed driveway along this curve must be reviewed and approved based on sight distances and observed speeds on Pleasant Ridge at permitting.

The applicant has submitted a site plan and elevation of the proposal along Rosalie Drive and Pleasant Ridge Drive that shows the fence in these front yard setbacks reaching a maximum height of five feet. Particularly, along Rosalie Drive, the fence is represented as being approximately 140 feet-in-length parallel to the street and approximately 35 feet perpendicular to the street on the east and west side of the site within the required front yard; located approximately five feet from the front property line or about 25 feet from the pavement line. Additionally, on Pleasant Ridge Drive, the fence is represented as being approximately 135 feet-in-length parallel to the street and approximately 35 feet perpendicular to the street on the southwest and northwest side of the site within the required front yard; located approximately at the front property line or about 25 feet from the pavement line.

Staff conducted a field visit of the site and the surrounding area approximately 400 feet north, south, east, and west of the site and noted no other fences that appeared to be above four feet-in-height and located in a front yard setback.

As of June 12, 2020, a petition of support with 10 signatures has been submitted in support (Attachment A) and no letters have been submitted in opposition to the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of one foot in these front yard setbacks 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 one foot-in-height in the front yard setbacks to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

January 3, 2020: 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 13, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 13, 2020: The Board of Adjustment Chief Planner/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 12, 2020 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 2, 2020: The applicant submitted additional documentation (Attachment A).

June 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the

Sustainable Development and Construction Senior Engineer, the Board of Adjustment Senior Planner the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the board.

June 15, 2020: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked “has no objections” (Attachment B).

BOARD OF ADJUSTMENT ACTION: June 24, 2020

APPEARING IN FAVOR: Sharon Wilkins 5610 Pleasant Ridge Rd. Dallas, TX.
Shawn Jones 5614 Pleasant Ridge Rd. Dallas, TX.
Angela Massey 5618 Pleasant Ridge Rd. Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Jones

I move that the Board of Adjustment, in Appeal No. BDA 190-062, on application of Mark D. Massey, represented by Angela Massey, **grant** the special exception to the fence height regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan and elevation is required.

SECONDED: Williams

AYES: 5 - Schwartz, Housel, Jones, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-066(OA)

BUILDING OFFICIAL’S REPORT: Application of Jackson Walker LLP for a variance to the height regulations at 5050 Walnut Hill Lane. This property is more fully described as Lot 1A, Block B/5544, and is zoned PD No. 385, which limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a non-residential structure with a building height of 45 feet, which will require a nine-foot variance to the maximum building height regulations.

LOCATION: 5050 Walnut Hill Lane

APPLICANT: Jackson Walker LLP

REQUEST:

A variance to the building height regulations of 9 feet is made to construct and maintain a 45 feet tall Theater and Arts Building on a site that is currently developed as a private school.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of 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:

- d. 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;
- e. 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
- f. 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:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique by its restrictive area, shape and slope. The site has two floodways one located in the east side and one in the west side of the property and a slope that precludes the applicant from developing the site with a structure that can comply with the building height regulations.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 385 (Planned Development)

North: R-1ac(A) (single family districts)

South: R-1ac(A) (single family districts)

East: R-1ac(A) (single family districts)

West: R-1ac(A) (single family districts)

Land Use:

The subject site is being developed with a private school use. The area 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:

The request for a variance the building height regulations of nine feet is made to construct and maintain a theater and arts building where portion of the building will be 45 feet tall on a site that is currently developed with a private school use.

The subject site is located in PD No. 385, which states the following with regard to the maximum structure height:

- 80 feet for the theater.
- 46 feet for the bell tower.
- 44 feet for the gymnasium.
- 25 feet for competitive athletic field netting and support poles, inclusive
- of any retaining wall.
- 45 feet above finished grade of the field for light standards used in
- conjunction with a competitive athletic field, as measured to the top of the fixture; and
- 36 feet for all other structures.

In this case, portion of the proposed structure is not considered part of the theater building that is allowed to be 80 feet tall by the building official. The applicant has submitted site plans and elevations that represent theater and arts building where portion of the building will be 45 feet tall, hence the nine-foot variance to the building height regulations.

According to DCAD records, the “main improvement” at 5050 Walnut Hill Lane are two school building structures, a D-wood frame structure built in 1978 with 14,828 square feet of area and a C-masonry structure built in 2008 with 77,392 square feet.

The subject site is sloped, irregular in shape, and according to the application contains approximately 25.8 acres in area.

The submitted site plan denotes the site has a 103.37-foot wide floodway easement fronting Walnut Hill and a 139.91-foot wide floodway easement fronting Inwood Road. This floodway easement limits and restricts the area where the proposed building may be placed and the site plan indicates the height of the building is affected by the slope.

The applicant has provided a document stating among other things, that the subject site is unique in that it contains a natural creek/floodway with steep slopes and many trees. Additionally, the natural creek/floodway and slope prevents the site from building in this floodway area. The document indicates that the creek/floodway and steep grades adjacent to the creek/floodway limits and prevents the applicant from complying with PD No. 385 building height regulations.

The applicant has the burden of proof in establishing the following:

- That granting the variance to the PD No. 385 building height regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variances to PD No. 385 building height regulations are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 385 zoning classification.
- The variances to front yard setback regulations would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 385 zoning classification.

If the Board were to grant the request for a variance to the PD No. 385 building height regulations and impose the applicant’s submitted site plan as a condition, the structure that does not comply the 36-foot building height regulations would be limited to that what is shown on this document.

Timeline:

- April 24, 2020: 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 13, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 13, 2020: The Board of Adjustment Chief Planner/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 12, 2020 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 5, 2020: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment A).
- June 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Senior Engineer, the Board of Adjustment Senior Planner the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the board.

BOARD OF ADJUSTMENT ACTION: June 24, 2020

APPEARING IN FAVOR: Jonathan Vinson 2323 Ross Ave. #600 Dallas, TX.

APPEARING IN OPPOSITION: None

MOTION: Jones

I move that the Board of Adjustment, in Appeal No. BDA 190-066, on application of Bill Dahlstrom of Jackson Walker, LLP, **grant** the request for a variance to the maximum building height regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Williams

AYES: 5 - Schwartz, Slade, Jones, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-059(OA)

BUILDING OFFICIAL’S REPORT: Application of Lisa Hudspeth Guerriero represented by Joseph Troskie for a special exception to the single family regulations to afford a handicapped person equal opportunity to use and enjoy a dwelling, and for a special exception to the single family regulations to afford a handicapped person equal opportunity to use and enjoy a dwelling at 7315 Kaywood Drive. This property is more fully described as Lot 19, Block 4/4831, and is zoned an R-7.5(A) Single Family District, in which an accessory structure may not exceed 25 percent of the floor area of the main structure and limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit for non-rental, which will require a special exception to the single family zoning use regulations, and to construct a single family residential accessory structure with 1,234 square feet of floor area (41.2 percent of the 3,000 square foot floor area of the main structure), which will require a 484-square-foot special exception to the floor area ratio regulations.

LOCATION: 7315 Kaywood Drive

**APPLICANT: Lisa Hudspeth Guerriero
represented by Joseph Troskie**

REQUESTS:

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

1. a request for a special exception for the handicapped equal opportunity to enjoy, construct, and maintain a 980 square foot accessory dwelling unit structure.
2. a request for a special exception for the handicapped equal opportunity to enjoy, construct, and maintain an accessory dwelling unit structure 41.2 percent the floor area of the main structure.

STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED:

Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

Zoning:

Site: R-7.5(A) (Single family district)

North: R-7.5(A) (Single family district)

South: R-7.5(A) (Single family district)

East: R-7.5(A) (Single family district)

West: R-7.5(A) (Single family district)

Land Use:

The subject site is developed with a barn. The area 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 near the subject site.

GENERAL FACTS/STAFF ANALYSIS:

The requests for special exceptions for the handicapped focus on constructing and maintaining a 1,234-square-foot accessory dwelling unit structure on a site being developed with a single family home. The accessory dwelling unit structure represents 41.2 percent the floor area of the main structure proposed at 3,000 square feet.

The site is zoned an R-7.5(A) Single Family District where the Dallas Development Code permits one dwelling unit per lot and an accessory structure may not exceed 25 percent of the floor area of the main structure.

The Dallas Development Code defines:

- a “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- a “kitchen” as “any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities.”
- a “bathroom” as “any room used for personal hygiene and containing a shower or bathtub or containing a toilet and sink.”
- a “bedroom” as “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sunrooms, and other similar rooms are considered bedrooms.”

The submitted site plan denotes the locations of two building footprints, the larger of the two with what appears to be a proposed two-story single family main structure and the smaller of the two denoted as “additional dwelling unit”. The site plan indicates the additional dwelling unit will exceed the permissible 25 percent of the floor area

This request centers on the function of what is proposed to be inside the smaller structure on the site – the “new two-story masonry/wood garage studio” structure, specifically its collection of rooms/features shown on the floor plan.

According to DCAD records, there is only a “storage building” at the property addressed at 7315 Kaywood Drive, built in 2000, with 1,200 square feet in area.

According to the submitted application, the main structure is proposed to contain 3,000 square feet of total floor area and according to the site plan, the proposed additional dwelling unit contains 1,234 square feet of total floor area.

Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

A copy of the “handicap” definition from this act was provided to the Board Administrator by the City Attorney’s Office. Section 3602 of this act states the following:

“(h) “Handicap” means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person’s major life activities,
2. a record of having such an impairment, or
3. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”

Therefore, the board is to consider these special exceptions for the handicapped request solely on whether they conclude that the special exceptions are necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

The applicant has the burden of proof in establishing the following:

- The special exceptions are necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and
- There is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.

If the board were to grant the requests and impose conditions that compliance with the submitted site plan is required and that the special exceptions expire when a handicapped person no longer resides on the property, the structure could be maintained in the location shown on the submitted site plan in the front and side yard setbacks for as long as the applicant or any other handicapped person resides on the site.

Timeline:

February 13, 2020: 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 13, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 13, 2020: The Board of Adjustment Chief Planner/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 12, 2020 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 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Senior Engineer, the Board of Adjustment Senior Planner the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the board.

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

BOARD OF ADJUSTMENT ACTION: June 24, 2020

APPEARING IN FAVOR:

Joseph Troskie 7214 Kaywood Dr. Dallas, TX
Lisa Hudspeth 4400 W. University Blvd #1202
Dallas, TX.
Shirley Hudspeth 413 N. Bradley McKinney, TX.

APPEARING IN OPPOSITION:

Wilma Wright 7311 Kaywood Dr. Dallas, TX.
Paul Wright 7311 Kaywood Dr. Dallas, TX.
Debra Moore 4619 W. University Dallas, TX.
Jonathan Maples 6525 Oriole Dallas, TX.

MOTION#1: Jones

I move that the Board of Adjustment, in request No. BDA 190-059 on application of Lisa Hudspeth Guerrierio, represented by Joseph Troskie, **grant** the request to construct and maintain an additional dwelling unit on a site developed with a single family structure and use as a special exception for the handicapped because our evaluation of the property and the testimony shows that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy the dwelling.

I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

The special exception expires when a handicapped person no longer resides on the property.

SECONDED: Williams

AYES: 4 - Schwartz, Slade, Jones, Williams

NAYS: 1 - Johnson

MOTION PASSED: 4 – 1

MOTION#2: Jones

I move that the Board of Adjustment, in Appeal No. BDA 190-059, on application of Lisa Hudspeth-Guerrierio, represented by Joseph Troskie, **grant** the 484 square foot special exception for the handicapped to the floor area ratio regulations because our evaluation of the property and testimony shows that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy the dwelling.

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

1. Compliance with the submitted site plan is required.
2. The special exception expires when a handicapped person no longer resides on the property.

SECONDED: Williams

AYES: 4 - Schwartz, Slade, Jones, Williams

NAYS: 1 - Johnson

MOTION PASSED: 4 – 1

FILE NUMBER: BDA190-045(OA)

BUILDING OFFICIAL’S REPORT: Application of Stephen Eddings for special exceptions to the fence height regulations and the visual obstruction regulations at 3024 Encino Drive. This property is more fully described as Lot 18B, Block 7/7498, and is zoned R-7.5(A), which limits the height of a fence in the front yard to four feet and requires a 20-foot visibility triangle at the intersections of streets and driveway approaches. The applicant proposes to

construct and/or maintain a five-foot six-inch-high fence in a required front yard, which will require a one-foot six-inch special exception to the fence regulations, and to construct and/or maintain items in a visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 3024 Encino Drive

APPLICANT: Stephen Eddings

REQUESTS:

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

1. A request for a special exception to the fence standards regulations related to the fence height of one foot and six inches is made to construct and maintain a five-foot six-inch iron fence with stone columns and a five-foot six-inch iron gate in the required front yard.
2. A request for special exceptions to the visual obstruction regulations is made to locate and maintain portions of the aforementioned five-foot six-inch iron fence with stone columns and a five-foot six-inch iron gate in the two 20-foot visibility triangles on both sides of the drive approach at the intersection with Encino Drive.

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.

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 regulations):

No staff recommendation is made on this or any request for a special exception to the fence standards 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 regulations):

Denial.

Rationale:

- The Sustainable Development Department Senior Engineer has objections to the requests. The Senior Engineer finds that the fence should be designed and constructed outside the visibility triangles because any deviation would compromise visibility of pedestrians or any moving object on the sidewalk or adjacent street.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should not be granted because the items to be located and maintained in the visibility triangles constitute traffic hazards.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district)

North: R-7.5 (A) (Single family district)

East: R-7.5 (A) (Single family district)

South: R-7.5 (A) (Single family district)

West: R-7.5 (A) (Single family district)

Land Use:

The subject site is being 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 related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS (fence standards special exceptions):

The requests for special exceptions to the fence standards regulations on a site developed with a single family home focus on constructing and maintaining a five-foot six-inch iron fence with stone columns and a five-foot six-inch iron gate in site's front yard.

The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The subject site is zoned R-7.5 (A) which requires a 25-foot front yard setback.

The applicant has submitted a site plan and elevation of the proposal. The plans show the proposal is represented as being approximately 54 feet-in-length parallel to the street and approximately 25 feet perpendicular to the street on the sides in the required front yard, located on the front property line or approximately 11 feet from the pavement line.

Staff conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and noted three other fences that appear to be above four feet-in-height and located in a front yard setback.

As of May 8, 2020, no letters have been submitted in support of or in opposition to this request; however, on May 1st, the applicant submitted a letter in support with signatures from two neighbors (Attachment B).

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of one-foot six-inches will not adversely affect neighboring property.

Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding four feet-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 these documents.

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

The requests for special exceptions to the fence standards regulations on a site developed with a single family home focus on constructing and maintaining portions of the aforementioned five-foot six-inch iron fence with stone columns and a five-foot six-inch iron gate in the two 20-foot visibility triangles on both sides of the drive approach at the intersection with Encino Drive.

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 an R-7.5 (A) District which requires the portion of a lot with a triangular area formed by connecting 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 five-foot six-inch iron fence with stone columns and a five-foot six-inch iron gate will be located in the 20-foot visibility triangle on both sides of the driveway that intersects with Encino Drive.

The Sustainable Development Department Senior Engineer has objections to the requests. The Senior Engineer finds that the fence should be designed and constructed outside the visibility triangles because any deviation would compromise visibility of pedestrians or any moving object on the sidewalk or adjacent street.

The applicant has the burden of proof in establishing how granting this request to maintain the proposed items in the two 20-foot visibility triangles on both sides of the driveway that intersect with Encino Drive does 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 in the two 20-foot visibility triangles formed on each side of the driveway that intersects with Encino Drive to that what is shown on these documents, the aforementioned five-foot six-inch iron fence with stone columns and a five-foot six-inch iron gate in the two 20-foot visibility triangles on both sides of the drive approach at the intersection with Encino Drive.

Timeline:

January 31, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

March 17, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 23, 2020: The Board of Adjustment Chief Planner/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 12, 2020 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 1, 2020: The applicant submitted a letter signed by two neighbors in support of the request (Attachment B).

June 5, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

June 15, 2020: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked “recommends denial” (see Attachment A).

BOARD OF ADJUSTMENT ACTION: June 24, 2020

APPEARING IN FAVOR: Stephen Eddings 3024 Encino Dr. Dallas, TX.

APPEARING IN OPPOSITION: Doug Williams 3035 Truxillo Dr. Dallas, TX.

MOTION#1: Slade

I move that the Board of Adjustment, in Appeal No. BDA 190-045, on application of Stephen Eddings, **grant** the request of this applicant to construct and/or maintain a five-foot six-inch high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

Compliance with the submitted site plan and elevation is required.

SECONDED: Jones

AYES: 5 - Schwartz, Slade, Jones, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION#2: Slade

I move that the Board of Adjustment, in Appeal No. BDA 190-045, on application of Stephen Eddings, **deny** the special exception requested by this applicant to maintain items in the

visibility triangle at the driveway approach **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Jones

AYES: 5 - Schwartz, Slade, Jones, Williams, Johnson

NAYS: 0

MOTION PASSED: 5 - 0 (unanimously)

The meeting was adjourned at 2:14 P.M. on June 24, 2020.


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.