

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS AUDITORIUM
MONDAY, JUNE 27, 2016**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Mary McCullough, Asst. City Attorney, Todd Duerksen, Dev. Code Specialist, Clay Buehrle, Engineering, Jennifer Muñoz, Senior Planner, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Mary McCullough, Asst. City Attorney, Todd Duerksen, Dev. Code Specialist, Clay Buehrle, Engineering, Jennifer Muñoz, Senior Planner, and Trena Law, Board Secretary

1:05P.M. The Board of Adjustment staff conducted a briefing and Public Hearing on the Board of Adjustment's **June 27, 2016** docket.

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 16, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 27, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-056(SL)

BUILDING OFFICIAL'S REPORT: Application of Ryan Wehner, represented by Zachary Webster, for special exceptions to the fence height and visual obstruction regulations at 5111 East Side Avenue. This property is more fully described as Lot 9, Block D/1422, and is zoned D(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations, and to locate/maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5111 East Side Avenue

APPLICANT: Ryan Wehner
Represented by Zachary Webster

REQUESTS:

The following requests have been made on a site that is developed with a multifamily structure/use:

1. A request for a special exception to the fence height regulations of 4' is made to maintain 8' high wood fences and gate.
2. Requests for special exceptions to the visual obstruction regulations are made to maintain portions of the 8' high wood fence in the 20' visibility triangles at the driveway into the site from East Side Avenue.

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 revised site plan/elevation is required.

Rationale:

- The Sustainable Development and Construction Department Project Engineer had indicated that he has no objections to the requests with the condition that the submitted site plan is imposed as a condition to this request.
- The applicant had substantiated how the location of 8' high wood fence in the 20' visibility triangles at the driveway into the site from East Side Avenue does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: D(A) (Duplex)
North: D(A) (Duplex)
South: D(A) (Duplex)
East: D(A) (Duplex)
West: D(A) (Duplex)

Land Use:

The subject site is developed with a multifamily structure/use. The areas to the north, south, east, and west appear to be 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 8' high wood fences and gate on a site developed with a multifamily structure 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.
- The site is zoned D(A) Duplex which requires a minimum front yard setback of 25'.
- The applicant has submitted a revised site plan/elevation of the proposal in the front yard setback that reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted revised site plan/elevation:
 - One of the fences exceeding 4' in height on the subject site is approximately 50' in length parallel to the street, and approximately 15' in length perpendicular to the street on the east and west sides of the site in the front yard setback. This fence/gate is approximately 10' from the property line or 18' from the pavement line.
 - The other fence exceeding 4' in height on the subject site is perpendicular to the street on the east side of the site, and located approximately 4' from the front property line and 21' into the 25' front yard setback.
- 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.
- Two homes front the proposal. Neither of these have fences in the front yard setback.
- As of June 17th, 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 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted revised site plan/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 this document.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction):

- These requests focus on maintaining portions of the 8' high wood fence in the 20' visibility triangles at the driveway into the site from East Side Avenue.
- 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 revised site plan/elevation denoting portions of the existing 8' wood fence located in the 20' visibility triangles at the driveway into the site from East Side Avenue.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following additional comment: "subject to the site plan."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain an 8' high solid wood fence in the two 20' visibility triangles at the driveway into the site from East Side Avenue does not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the submitted revised site plan/elevation would require the items in the visibility triangles to be limited to and maintained in the locations, height and materials as shown on this document.

Timeline:

- May 25, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 10, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 11, 2016: The Board Administrator emailed the applicant's representative 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 8th deadline to submit additional evidence for staff to factor into their analysis; and the June 17th 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 14, 2016: 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 Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 14, 2016: The Board Administrator made the applicant's representative aware of the fact that the fence represented on the submitted site plan/elevation shows an 8' high wood fence with vertical wood slats that does not coincide with the existing wood fence on the subject site that is of horizontal wood slats, and that because of this discrepancy, he will be required to modify the existing fence to that what is shown on his submitted site plan/elevation if he does not submit a revised site plan/elevation prior to or at the public hearing that represents a fence with horizontal wood slats.

June 17, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following additional comment: "subject to the site plan."

June 17, 2016: The applicant's representative submitted additional documentation on this application (a revised site plan/elevation) (see Attachment A).

BOARD OF ADJUSTMENT ACTION: JUNE 27, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move to grant that the Board of Adjustment grant application **BDA 156-056** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan/elevation is required.

SECONDED: Beikman

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-060(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Reeves for a special exception to the off-street parking regulations at 3910 Gaston Avenue. This property is more fully described as Lot 4A, Block A/777, and is zoned PD 298 (Subarea 12), which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for restaurant without drive-in or drive-through service, medical clinic or ambulatory surgical center, office, general merchandise or food store 3,500 square feet or less use, general merchandise or food store greater than 3,500, and multifamily uses, and provide 107 of the required 133 parking spaces, which will require a 26 space special exception to the off-street parking regulations.

LOCATION: 3910 Gaston Avenue

APPLICANT: Robert Reeves

REQUEST:

A request for a special exception to the off-street parking regulations of 26 spaces is made in conjunction with leasing an existing approximately 26,000 square foot building with a mix of restaurant without drive-in service, medical clinic, office, and general merchandise or food store, and multifamily uses, and providing 107 of the required 133 off-street parking spaces.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is

greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 26 spaces shall automatically and immediately terminate if and when the mix of restaurant without drive-in service, medical clinic, office, and general merchandise or food store, and multifamily uses is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer indicated that he has no objections to the applicant's request.

Zoning:

- Site: PD No. 298 (Planned Development)
- North: PD No. 298 (Planned Development)
- South: PD No. 298 (Planned Development)
- East: PD No. 298 (Planned Development)
- West: PD No. 298 (Planned Development)

Land Use:

The subject site is developed with an approximately 26,000 square foot structure that appears to be leased with office and medical clinic uses. The areas to the north, east, south, and west are developed with a mixture of retail, office, and parking uses.

Zoning/BDA History:

1. BDA 045-272, Property at 3910 Gaston Avenue (the subject site)

On December 13, 2010, the Board of Adjustment Panel C granted a request for a special exception to parking regulations of 26 spaces. The board imposed the following conditions: 1) the special exception shall automatically and immediately terminate if and when a certificate of occupancy is issued for a use other than a restaurant, retail, office, medical clinic, or residential use; and 2) the special exception of 26 spaces shall apply to residential uses, medical clinic uses, office uses, and up to 13,230 square feet of retail uses, and up to 2,000 square feet of restaurant uses.

The case report stated that the request was made in conjunction with leasing an existing approximately 26,000 square foot building with a mix of residential, medical clinic, office, and retail uses, and providing 107 of the required 133 off-street parking spaces.

2. BDA 045-272, Property at 3910 Gaston Avenue (the subject site)

On March 15, 2005, the Board of Adjustment Panel C granted a request for a special exception to parking regulations of 26 spaces. The board imposed the following conditions: The special exception shall automatically and immediately terminate if and when the restaurant, retail, office, medical clinic, and residential uses on the site are changed or discontinued; the special exception of 26 spaces shall be tied to the City's parking agreement which allows for at least 41 extra spaces being made available on 3911 Gaston Avenue; and a copy of the parking agreement shall be submitted to the Board's Administrator once executed; and the special exception of 26 spaces shall apply to residential uses, medical clinic uses, offices uses, and up to 13,230 square feet of retail uses, and up to 2,000 square feet of restaurant uses.

The case report stated that the request was made in conjunction in conjunction with converting an existing vacant 26,712 square foot building from being exclusively used for medical clinic use to being used with a mix of uses including medical clinic, office, restaurant, retail, and residential uses.

3. BDA034-136, Property at 3910 Gaston Avenue (the subject site)

On March 15, 2004, the Board of Adjustment Panel C granted a request for a special exception to parking regulations of 26 spaces. The board imposed the following conditions: the special exception of 26 spaces shall automatically and immediately terminate if and when the medical clinic use on the site is changed or discontinued; the special exception of 26 spaces shall be tied to the City's parking agreement which allows for at least 41 extra spaces being made available on 3911 Gaston Avenue; and a copy of the parking agreement shall be submitted to the Board's Administrator once executed.

The case report stated that the request was made in conjunction with converting an existing 26,712 square foot building from an

office use to a medical clinic use.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on leasing an existing approximately 26,000 square foot building with a mix of restaurant without drive-in service, medical clinic, office, and general merchandise or food store, and multifamily uses, and providing 107 of the required 133 off-street parking spaces.
- The subject site is located in PD 298 (Subarea 12). The parking provisions in Chapter 51A apply with some modifications that do not apply to the uses proposed in this application.
- The Dallas Development Code requires the following off-street parking requirements:
 - Restaurant without drive-in or drive-through service use: As a main use: 1 space per 100 square feet of floor area. As a limited or accessory use: 1 space per 200 square feet of floor area.
 - Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area.
 - Multifamily use: 1 space per bedroom with a minimum of 1 space per bedroom.
 - General merchandise or food store 3,500 square feet or under use: 1 space per 200 square feet of floor area.
 - General merchandise or food store greater than 3,500 square feet use: 1 space per 200 square feet of floor area for uses with less than 10,000 square feet; 1 space per 220 square feet for uses with a floor area of 10,000 square feet or greater, but less than 40,000 square feet of floor area; 1 space per 250 square feet of floor area for uses with a floor area of 40,000 square feet or greater, but less than 100,000 square feet of floor area.
 - Office use: 1 space per 333 square feet of floor area.
- The applicant has referenced that in December of 2010 (BDA090-010), the Board approved a 26 space parking special exception on the subject site and imposed conditions that limited retail uses to 13,230 square feet, and restaurant use to 2,000 square feet. The applicant has filed a new application to increase the square footage of the restaurant use from 2,000 to 4,700 square feet.
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the mix of restaurant without drive-in service, medical clinic, office, and general merchandise or food store, and multifamily uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 26 spaces (or a 20 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 26 spaces shall automatically and immediately terminate if and when the medical clinic use is changed or discontinued, the applicant would be allowed to lease and maintain the structure on the site with the mix of restaurant without drive-

in service, medical clinic, office, and general merchandise or food store, and multifamily uses, and provide 107 of the 133 code required off-street parking spaces.

Timeline:

- April 18, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 10, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”
- May 10, 2016: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the June 8th deadline to submit additional evidence for staff to factor into their analysis; and the June 17th 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 6, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application, and the Building Inspection Senior Plans Examiners/Development Code Specialist created a revised Building Official’s report (see Attachment A).
- June 14, 2016: 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 Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 17, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objection."

BOARD OF ADJUSTMENT ACTION: JUNE 27, 2016

APPEARING IN FAVOR: Robert Reeves, 900 Jackson Street #160, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move that the Board of Adjustment, in request No. **BDA 156-060**, on application of Robert Reeves, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 26 spaces because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. The special exception of 26 spaces shall automatically and immediately terminate if and when the mix of restaurant without drive-in service, medical clinic, office, general merchandise or food store, and multifamily uses on the property are changed or discontinued.
2. Compliance with the submitted site plan is required.

SECONDED: Beikman

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-061(JM)

BUILDING OFFICIAL’S REPORT: Application of Migjen Fetaj, for a special exception to the fence height regulations at 11922 Audelia Road. This property is more fully described as Tract 3, Block 8441, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot high fence in a required front yard, which will require 4 foot special exceptions to the fence height regulations.

LOCATION: 11922 Audelia Road

APPLICANT: Migjen Fetaj

REQUEST:

A request for special exceptions to the fence height regulations of 4' are made to construct and maintain an 8' wooden fence along approximately 325' of frontage on Audelia 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.

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5(A) (Single family district 7,500 sq. ft.)
<u>North, East & South:</u>	R-7.5(A) (Single family district 7,500 sq. ft.)
<u>Northwest:</u>	MF-1(A) (Multifamily)
<u>Southwest:</u>	CR (Community retail district)

Land Use:

The subject site is developed with a single family home. The areas to the north and east are developed with single family uses. To the south is undeveloped land in the floodplain. To the northwest are apartments. To the southwest and far south are retail shops and restaurants.

Zoning/BDA History:

None.

GENERAL FACTS/STAFF ANALYSIS:

- The current request is for an 8' high cedar board-on-board privacy fence within the 25' front yard building setback along the front yard of the subject site on Audelia Road.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.

- The applicant has submitted a site plan/elevation of the proposal with notations indicating that the fence will be up to 8 feet high.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 375' in length parallel to Audelia Road. They have been advised and the plan indicates they will be providing the required 20' visibility triangle for the gate entryway off of Audelia Road on the south end of the property. This will be the only point of vehicular access for the site. They will be closing out a secondary entrance at the north end of the property near the front of the house. Turnaround will be completed on-site (no backing-out onto Audelia Road).
 - The proposal is represented as being located approximately 4' from the property line on Audelia Road, except at the driveway gate entrance where they provide a 20' visibility triangle setback at minimum. The 4' difference is not labeled on the site plan.
 - An existing front yard fence above the height restriction of 4' will be removed after the result of this case. It has not been shown on the site plans for this reason.
- All surrounding properties facing the subject area of request (frontage along Audelia Road) do not have the same height restrictions for front yard fences (MF-1(A) and CR). The apartments have a fence seemingly taller than 4', but wrought iron (see-through).
- As of June 17, 2016, no letters have been submitted in support/opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 4' in height in the front yard setback to be modified and maintained in the location and of the height and materials as shown on this document.

Timeline:

- April 21, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 10, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 17, 2016: The Board Administrator emailed the applicant's representative 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 8th deadline to submit

additional evidence for staff to factor into their analysis; and the June 17th 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 14, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: JUNE 27, 2016

APPEARING IN FAVOR: Migjen Fetaj, 11922 Audelia, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move that the Board of Adjustment, in Appeal No. **BDA156-061**, on application of Migjen Fetaj, **grant** the request to construct and maintain an 8-foot-high fence in the property's front yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Beikman

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-067(SL)

BUILDING OFFICIAL'S REPORT: Application of Maxwell Fisher of Masterplan for a special exception to the off-street parking regulations at 10370 N. Central Expressway. This property is more fully described as Lot 2, Block B/7292, and is zoned MU-3(SAH), which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for a hotel or motel use and provide 115 of the required 131 parking spaces which will require a 16 space special exception to the off-street parking regulations.

LOCATION: 10370 N. Central Expressway

APPLICANT: Maxwell Fisher of Masterplan

REQUEST:

A request for a special exception to the off-street parking regulations of 16 spaces is made to complete and maintain a five-story, 124-room hotel use (Hampton Inn) with approximately 1,400 square feet of meeting room space, and provide 115 of the required 131 off-street parking spaces.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

- (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
 - 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
 - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
 - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 16 spaces shall automatically and immediately terminate if and when the hotel or motel use is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer indicated that he has no objections to the applicant's request.

Zoning:

Site: MU-3 (SAH) (Mixed Use)
North: MC-1 (Multiple Commercial)
South: MU-3 (SAH) (Mixed Use)
East: MU-3 (SAH) (Mixed Use)

West: MU-2 (Mixed Use)

Land Use:

The subject site is under development. The area to the north is developed with retail uses, the area to the east is developed with a hospital use; the area to the south is undeveloped and is the subject site of an application to the Board of Adjustment Panel A on June 28, 2016 (BDA156-068); and the area to the west is North Central Expressway.

Zoning/BDA History:

1. BDA156-068, Property at 10350 N. Central Expressway (the lot south of the subject site)

On June 28, 2016, the Board of Adjustment Panel A will consider a request for a special exception to the off-street parking regulations of 15 spaces made in conjunction to construct and maintain a five-story, 110-room hotel with approximately 2,700 square feet of meeting space, on a site in part undeveloped and in part developed with a surface parking lot, and provide 109 of the required 124 off-street parking spaces.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on completing and maintaining a five-story, 124-room hotel use with approximately 1,400 square feet of meeting room space, and providing 115 of the required 131 off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirements:
 - Hotel or motel use: 1 space for each unit for units 1 to 250; $\frac{3}{4}$ space for each unit for units 251-500; $\frac{1}{2}$ space for all units over 500; plus 1 space per 200 square feet of meeting room.
- The applicant has submitted a parking study which states among other things that the projected peak parking demand for the proposed use based upon data from the Institute of Transportation Engineers is 0.60 parked vehicles per occupied room on a weekday and 0.66 parked vehicles per room on a Saturday, which is less than the City's base parking requirement of 1 space per unit. (124 guestrooms parked at 0.66 spaces per room would total 82 spaces; the applicant proposes to provide 115 spaces).
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the "hotel or motel" use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 16 spaces (or a 12 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 16 spaces shall automatically and immediately terminate if and when the hotel or motel use is changed or discontinued, the applicant would be allowed to complete and maintain the structure on the site with this specific use ("hotel or motel") with the specified square footage, and provide 115 of the 131 code required off-street parking spaces.

Timeline:

- May 6, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 13, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- May 13, 2016: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the June 8th deadline to submit additional evidence for staff to factor into their analysis; and the June 17th 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 14, 2016: 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 Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- June 17, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

BOARD OF ADJUSTMENT ACTION: JUNE 27, 2016

APPEARING IN FAVOR: Maxwell Fisher, 900 Jackson St., Dallas, TX
Steve Stoner, 7557 Rambler Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Schulte

I move that the Board of Adjustment, in request No. **BDA 156-067**, on application of Maxwell Fisher, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 16 spaces because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard and increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 16 spaces shall automatically and immediately terminate if and when the hotel or motel use on the property is changed or discontinued.

SECONDED: Foster

AYES: 3 – Carreon, Schulte, Foster

NAYS: 2 – Richardson, Beikman

MOTION FAILED: 3 – 2

MOTION #2: Schulte

I move that the Board of Adjustment, in request No. **BDA 156-067**, on application of Maxwell Fisher, **deny** the special exception to the off-street parking regulations requested by this applicant **without prejudice** because our evaluation of the property and the testimony shows that the use warrants the number of off-street parking spaces required, and the special exception would create a traffic hazard and increase traffic congestion on adjacent and nearby streets.

SECONDED: Carreon

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-065(SL)

BUILDING OFFICIAL’S REPORT: Application of Steven Wood for a variance to the front yard setback regulations at 6730 Sunnyland Lane. This property is more fully described as Lot 1, Block 1/2976, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 10 foot front yard setback measured at the foundation with a maximum 18" roof eave, which will require a 15 foot variance to the front yard setback regulations.

LOCATION: 6730 Sunnyland Lane

APPLICANT: Steven Wood

REQUEST:

A request for a variance to the front yard setback regulations of 15’ is made to replace an existing one-story single family home structure with a two-story single family home structure, part of which is to be located 10’ from the front property line or 15’ into the 25’ front yard setback.

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, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff recognizes that the subject site is unique and different from most lots in the R-7.5(A) zoning district in that it is irregular in shape, however, staff recommends denial because:
 - 1) the subject site is approximately 5,000 square feet larger in area than most lots in the R-7.5(A) zoning district; and
 - 2) the applicant had not provided information documenting that the replacement home with approximately 5,800 square feet of living space (approximately 4,000 square feet larger in area than the single family home that exists on the site) is commensurate with the development found upon other parcels of land with the same R-7.5(A) zoning district.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family home structure that the applicant intends to demolish and replace with another single family home structure. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on replacing an existing one-story single family home structure with a two-story, single family home structure with approximately 5,800 square feet of a/c space, part of which is to be located 10' from the site's front property line or 15' into the 25' front yard setback.
- The property is located in an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.
- A scaled site plan has been submitted indicating that the proposed structure is located as close as 10' from the front property line or as much as 15' into this 25' front yard setback.
- According to DCAD records, the "main improvement" for property addressed at 6730 Sunnyland Lane is a structure built in 1950 with 1,974 square feet of living/total area with the following "additional improvements": a 72 square foot storage building.
- The subject site is relatively flat, triangular in shape, and according to the submitted application is 0.288 acres (or approximately 12,500 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the 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 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 R-7.5(A) 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 R-7.5(A) zoning classification.

- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structures in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 10’ from the site’s front property line (or 15’ into the 25’ front yard setback).

Timeline:

April 21, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 10, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 11, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the June 8th deadline to submit additional evidence for staff to factor into their analysis; and the June 17th 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 14, 2016: 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 Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: JUNE 27, 2016

APPEARING IN FAVOR: Danny Sipes, P.O. Box 3293, Dallas, TX
Jim Rorke, 6780 Sunnyland, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment, in request No. **BDA 156-065**, hold this matter under advisement until **August 15, 2016**.

SECONDED: **Beikman**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Richardson**

I move to adjourn this meeting.

SECONDED: **Coulter**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

2:42 P. M. - Board Meeting adjourned for **June 27, 2016**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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