

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
WEDNESDAY, JUNE 29, 2016**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Larry Brannon, regular member, Wini Cannon, regular member, Robert Agnich, alternate member, and Peggy Hill, alternate member

MEMBERS ABSENT FROM BRIEFING: Alex Winslow, regular member

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Larry Brannon, regular member, Wini Cannon, regular member, Robert Agnich, alternate member, and Peggy Hill, alternate member

MEMBERS ABSENT FROM HEARING: Alex Winslow, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Mary McCollough, Asst. City Attorney, Neva Dean, Interim Asst. Director, Todd Duerksen, Development Code Specialist, Clay Buehrle, Engineering, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

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

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 29, 2016 docket.**

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

To approve the Board of Adjustment Panel B May 18, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 29, 2016

MOTION: None

The minutes were approved.

FILE NUMBER: BDA156-059(SL)

BUILDING OFFICIAL’S REPORT: Application of Shideh Sharifi, represented by Elsie Thurman, for a special exception to restore a nonconforming use at 2824 Cole Avenue. This property is more fully described as part of Lot 6 & 7, Block 963, and is zoned PD 193, PDS 2, Tract A, which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming office use, which will require a special exception to the nonconforming use regulations.

LOCATION: 2824 Cole Avenue

APPLICANT: Shideh Sharifi
Represented by Elsie Thurman

REQUEST:

A request for a special exception to restore/reinstate nonconforming use rights for an office use on the subject site that was discontinued for a period of six months or more is made to obtain a Certificate of Occupancy (CO) for this use.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas Development Code states that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 193 (PDS 2, Tract A) (Planned Development)
<u>North:</u>	PD 193 (PDS 45) (Planned Development)
<u>South:</u>	PD 193 (PDS 2, Tract A) (Planned Development)
<u>East:</u>	PD 193 (PDS 2, Tract A) (Planned Development)
<u>West:</u>	PD 193 (PDS 2, Tract B) (Planned Development)

Land Use:

The subject site is developed with a vacant structure. The area to the north is developed with a public school (William Travis Academy); and the areas to the east, south, and west are developed with multifamily 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 restoring/reinstating nonconforming use rights for an office use that has been discontinued for six months or more in order for the applicant to obtain a Certificate of Occupancy (CO) for this use.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time”.
- The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The nonconforming use regulations also state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The subject site is zoned PD 193 (PDS 2, Tract A) – a zoning district that does not permit an office use at this location.
- A document has been included in the case file that states the office use at 2824 Cole Avenue has been identified by Building Inspection to be a nonconforming use.
- Building Inspection has stated that these types of special exception requests originate from when an owner/officer related to the property applies for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be

issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.

- If the Board were to grant this request, the nonconforming office use on the site would be subject to the possibility of an application that could be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The applicant could achieve conforming use status for the office use on the site with a change in zoning from the City Council.
- The owner could develop the site with any use that is permitted by right in the site's existing PD 193 (PDS 2) zoning classification.
- The applicant has stated among other things that the applicant's business tenants abandoned the property without notification while the applicant was out of the country in August of 2015; the property had to be repaired due to neglect of the premises which caused a 6 month time lapse.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming office use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming office use rights that were lost when the use was abandoned for a period of six months or more.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to "Nonconforming Uses and Structures").

Timeline:

- April 13, 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 B.
- May 11, 2016: The Board Administrator emailed the applicant's representative and emailed 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 1 p.m., 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;
- the section from the Dallas Development Code pertaining to nonconforming uses and structures; 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 29, 2016

APPEARING IN FAVOR: Elsie Thurman, 9406 Biscayne Blvd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Agnich**

I move that the Board of Adjustment, in request No. **BDA 156-059**, on application of Shideh Sharifi, **grant** the request of this applicant for a special exception to the provision found in Section 51A-4.704(a)(2) of the Dallas Development Code providing that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, because the owner of the property has shown that there was a clear intent not to abandon the use.

SECONDED: **Cannon**

AYES: 5 – Hounsel, Brannon, Cannon, Agnich, Hill

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA156-064(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the fence height regulations at 4802 Dorset Road. This property is more fully described as Lot 4D, Block E/5532, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations.

LOCATION: 4802 Dorset Road

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a special exception to the fence height regulations of 4' is made to replace an approximately 6' high lattice wood fence with the following in the front yard setback on a property being developed with a single family home:

1. a 6' high masonry fence with 6' 2" high columns, and a 8' high open metal gate with 7' 2" high entry gate columns parallel to the street, and
2. 6' high masonry and wood fences perpendicular to the street.

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:

Site: R-1ac (A) (Single family district 1 acre)

North: R-1ac (A) (Single family district 1 acre)

South: R-1ac (A) (Single family district 1 acre)

East: R-1ac (A) (Single family district 1 acre)

West: R-1ac (A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on replacing an approximately 6' high lattice wood fence with the following in the front yard setback on a property being developed with a single family home:
 1. a 6' high masonry fence with 6' 2" high columns, and a 8' high open metal gate with 7' 2" high entry gate columns parallel to the street, and
 2. 6' high masonry and wood fences perpendicular to the street.
- 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 R-1ac(A) and has a 40' front yard setback.
- The applicant has submitted a revised site plan/elevation that indicates the proposal reaches a maximum height of 8' for the open wrought iron vehicular gate.
- The following additional information was gleaned from the submitted revised site plan:
 - The proposal is represented as being approximately 30' in length parallel to the street, and approximately 40' in length perpendicular to the street on the east and west sides of the site in the front yard setback.
 - The proposed fence is represented as being located beginning on the front property line or approximately 20' from the pavement line; the proposed gate is represented as being located approximately 10' from the front property line, or approximately 30' from the pavement line.
- One single family lot developed with a single family structure that fronts eastward to Dorset Place is directly north of proposed fence. This lot has no fence.
- The Board Administrator conducted a field visit of the site and surrounding area (properties along Dorset Road from approximately 200 feet east and west of the site) and noted one other fence over 4' in height and in front yard setback. The only fence noted in this area was an approximately 6' high solid wood fence located northwest of the site with no recorded BDA history.
- As of June 17th, 2016, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 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 constructed and maintained in the location and of the heights and materials as shown on this document.

Timeline:

- April 22, 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 B.

- May 11, 2016: The Board Administrator emailed the applicant the following information:
- 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 1 p.m., 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 8, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (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.
- No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: JUNE 29, 2016

APPEARING IN FAVOR: Robert Baldwin 5, Dallas, TX

APPEARING IN OPPOSITION: Robert Neuhoff, 4710 Dorset Rd., Dallas, TX

MOTION #1: Brannon

I move that the Board of Adjustment, in Appeal No. **BDA156-064**, on application of Robert Baldwin, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Hill

AYES: 2 – Brannon, Hill

NAYS: 0 – Hounsel, Cannon, Aginich

MOTION FAILED 2 – 3

MOTION #2: Cannon

I move that the Board of Adjustment, in Appeal No. **BDA156-064**, on application of Robert Baldwin, **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 revised site plan/elevation as amended on 6-29-2016 required.

SECONDED: Agnich

AYES: 4 – Hounsel, Cannon, Agnich, Hill

NAYS: 1 – Brannon

MOTION PASSED 4 – 1

FILE NUMBER: BDA156-066(SL)

BUILDING OFFICIAL'S REPORT: Application of Nancy Rodriguez for a special exception to the fence height regulations at 10650 Strait Lane. This property is more fully described as Lot 4B, Block 5519, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 9 foot 9 inch high fence, which will require a 5 foot 9 inch special exception to the fence height regulations.

LOCATION: 10650 Strait Lane

APPLICANT: Nancy Rodriguez

REQUEST:

A request for a special exception to the fence height regulations of 5' 9" is made to construct and maintain a 7' high solid stone veneer fence with 7' 8" high stone veneer columns and a 9' 9" high solid metal entry gate on an undeveloped site.

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-1ac (A) (Single family district 1 acre)
<u>North:</u>	R-1ac (A) (Single family district 1 acre)
<u>South:</u>	R-1ac (A) (Single family district 1 acre)
<u>East:</u>	R-1ac (A) (Single family district 1 acre)
<u>West:</u>	R-1ac (A) (Single family district 1 acre)

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:

1. BDA156-005, Property at 10650 Strait Lane (the subject site)
2. BDA023-113, Property at 10647 Strait Lane (the lot northwest of the subject site)

On January 20, 2016, the Board of Adjustment Panel B denied a request for a special exception to fence height regulations of 9' 9" without prejudice.

The case report stated the request was made to replace an existing approximately 5' high open wrought iron fence and approximately 9' high arched wrought iron entry gate with a 7' 4" high solid stone veneer fence with 8' 4" high stone veneer columns and a 9' 9" high metal entry gate on an undeveloped site.

On August 26, 2003, the Board of Adjustment Panel A granted a request for a special exception to fence height regulations of 4' 9" and imposed the submitted scaled elevation/site plan as a condition to the request.

The case report stated the request was made to construct and maintain a 6' high open wrought iron fence with 7' high brick columns and two 6' – 8' 9" high open wrought iron entry gates.

3. BDA001-172, Property at 10660 Strait Lane (the lot north of the subject site)

On March 27, 2001, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 6' and a special exception to allow a 2nd electrical meter on the site. The Board imposed the submitted elevation and site/landscape plan as a condition to these requests.

The case report stated the requests were made to construct and maintain a maximum 7' high combination open fence with a 2' 4" solid masonry base and a 10' high PVC-coated metal tennis court fence, and a special exception to allow a 2nd electrical meter on a site.

4. BDA012-221, Property at 10620 Strait Lane (the lot south of the subject site)

On August 13, 2002, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 8' 1" and imposed the submitted site plan and fence elevations as a condition to this request.

The case report stated the requests were made to construct and maintain an 8' high open metal fence with 8' 1" high metal posts, 9' 4.5" high entry columns and a 12' 1" high arched entry gate.

5. BDA001-258, Property at 10611 Strait Lane (the lot southwest of the subject site)

On November 12, 2001, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 3' 2", granted and a request for a special exception to the single family use regulations, and granted a request for a variance to the front yard setback regulations. The board imposed the submitted revised landscape site plan and revised fence elevation with regard to the requests for a fence height special exception and front yard variance requests, and imposed the revised landscape/site plan and that the property be deed-restricted to prohibit the additional dwelling unit from being used as rental accommodations with regard to the single family use special exception. The case report stated the requests were made to construct and maintain a single family home, garage, and guest quarters on the site, and to construct and maintain an 8' 3" high open metal fence with 8' 9" high columns, and 9' 2" high metal entry gates.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 7' high solid stone veneer fence with 7' 8" high stone veneer columns and a 9' 9" high solid metal entry gate on an undeveloped site.
- 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 R-1ac(A) and has a 40' front yard setback.
- The applicant has submitted a full site plan and partial site plan/elevation of the proposal with notations indicating that the proposal reaches a maximum height of 9' 9".
- The following additional information was gleaned from the submitted full site plan:
 - The proposal is represented as being approximately 220' in length parallel to Strait Lane.
 - The proposed fence is represented as being located on the front property line, or approximately 16' from the pavement line, and the proposed gate is represented as being located 12' from the front property line, or approximately 28' from the pavement line.

- Two single family lots front the proposal. One of these lots has no fence in its front yard, and the other has an approximately 6' high open metal fence with 7.5' high entry gates that that appears to be the result of a fence height special exception granted by the Board in 2001: BDA 001-258.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 400 feet north and south of the subject site) and noted a number of other fences over 4' in height and in front yard setbacks. In addition to the fence immediately southwest of the site previously described were the following:
 - an approximately 7' high solid fence with 9' high gate immediately north of the subject site; and
 - an approximately 9' high open metal fence with 11' high gates immediately south of the subject site; and an approximately 6' high combination open metal/solid masonry fence located northwest of the subject site.
 (These properties have recorded BDA history for requests for special exceptions to fence height regulations).
- As of June 17, 2016, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' 9" will not adversely affect neighboring property.
- Granting this special exception of 5' 9" with a condition imposed that the applicant complies with the submitted a full site plan and partial site plan/elevation would require the proposal exceeding 4' in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

- April 20, 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 assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- 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 1 p.m., 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 8, 2016: The Building Inspection Senior Plans Examiners/Development Code Specialist created a revised Building Official's report that reflected the applicant's request to raise the special exception request from 3' 8" to 5' 9" (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.

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

BOARD OF ADJUSTMENT ACTION: JUNE 29, 2016

APPEARING IN FAVOR: Nancy Rodriguez, 8001 Wayne Way, Rowlette, TX
Joann Habbros, 412 Stonebridge CR, Allen TX

APPEARING IN OPPOSITION: No one

MOTION #1: Cannon

I move that the Board of Adjustment, in Appeal No. **BDA156-066**, on application of Nancy Rodriguez, **grant** the request to construct and maintain an 8-foot, 9 inch 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 full site plan and partial site plan/elevation is required.

SECONDED: Hill

AYES: 2 – Cannon, Hill

NAYS: 3 – Hounsel, Brannon, Agnich

MOTION FAILED 2 – 3

MOTION #2: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA156-066**, on application of Nancy Rodriguez, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Hounsel

AYES: 5 – Hounsel, Brannon, Cannon, Agnich, Hill

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA156-069(SL)

BUILDING OFFICIAL’S REPORT: Application of Jeffrey R. Bragalone, represented by Signe Smith, for a variance to the height regulations at 4105 W. Lawther Drive. This property is more fully described as Lot 4B, Block 4408, and is zoned R-1ac(A), which limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a structure with a building height of 41 feet 9 inches, which will require a 5 foot 9 inch variance to the height regulations.

LOCATION: 4105 W. Lawther Drive

APPLICANT: Jeffrey R. Bragalone
Represented by Signe Smith

REQUEST:

A request for a variance to the height regulations of 5’ 9” is made to construct and maintain a three-level single family home structure which is proposed to exceed the 36’ maximum structure height on the undeveloped subject site.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, 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:

Approval, subject to the following condition:

- Compliance with the submitted “enlarged site plan, site section” document is required.

Rationale:

- The subject site is unique and different from most lots in the R-1ac(A) zoning district in that it is sloped. The slope of the subject site is the factor that makes the proposed 35’ 6” high single family home on the site measured from existing grade, 41’ 9” in height (or 5’ 9” above the 36’ maximum permitted height) measured from *average* grade.
- Furthermore, the proposed home with a total square footage of approximately 8,200 square feet appears to be commensurate with other developments in the same R-1ac(A) zoning district. The applicant has provided information where the average of seven other properties on the street/zoning district is approximately 10,900 square feet.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is undeveloped. The areas to the north and west are developed with single family uses; the area to the east is White Rock Lake; and the area to the south is undeveloped.

Zoning/BDA History:

1. BDA145-075, Property at 4105 W. Lawther Drive (the subject site)

On August 26, 2015, the Board of Adjustment Panel B granted a request for a variance to height regulations of 5’ 9”. The board imposed the following condition: compliance with the submitted enlarged site plan and revised section is required. The case report stated that the request was made to construct and maintain a three-level

single family home structure which is proposed to exceed the 36' maximum structure height on the undeveloped subject site.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a three-level single family home structure which at its highest point reaches 41' 9", and exceeds the 36' maximum structure height on the undeveloped R-1ac(A) zoned subject site by 5' 9".
- The applicant's representative has stated that this application is the same proposal/application that was granted unanimously by the Board of Adjustment Panel B in August of 2015, and that this application is filed only because the applicant did not file for a building permit within 180 days from the Board's favorable action of August 26, 2015.
- The maximum structure height on properties zoned R-1ac(A) is 36'.
- The Dallas Development Code provides the following definition for "height": "Height means the vertical distance measured from grade to: (A) for a structure with a gable, hip, or gambrel roof, the midpoint of the vertical dimension between the lowest eaves and the highest ridge of the structure; (B) for a structure with a dome, the midpoint of the vertical dimension of the dome; and (C) for any other structure, the highest point of the structure".
- The Dallas Development Code provides the following definition for "grade": "Grade means the average of the finished ground surface elevations measured at the highest and lowest exterior corners of a structure. For purposes of this definition, finished ground surface elevation means the ground surface elevation of a building site before any construction or ground surface elevation as altered in accordance with grading plans approved by the building official. Finished ground surface elevation does not include: (A) fill material not necessary to make the site developable; (B) berms; or (C) landscape features".
- The Dallas Development Code provides the following definition for "structure": "Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner".
- An application and a site/building section document has been submitted that represents the maximum height of the proposed structure to be 41' 9" or 5' 9" above the 36' maximum structure height permitted in the R-1ac(A) zoning district.
- The applicant states that the proposed home would have a total square footage of approximately 8,200 square feet where the average of seven other properties on the street/zoning district is approximately 10,900 square feet.
- The submitted site plan/building section document provides the following notation adjacent to the proposed structure: "35'-6" Exist. Grade-to-roof peak (36'-0" allowed)."
- A revised "enlarged site plan, site section" document has been submitted with notations regarding the height of the proposed structure that indicates: 1) "35'-6" top of roof above existing grade (36'-0" allowed)"; and 2) "41'-9" top of roof above average grade".

- According to DCAD records, there is “no main improvement” or “no additional improvements” for property addressed at 4105 W. Lawther Drive.
- A site plan has been submitted that documents the slope of the subject site. The site plan denotes contour lines that range from 465’ to 491’ over the length of the 400’ subject site.
- The sloped subject site is rectangular in shape, and according to the submitted application is 1.1 acres in area. The site is zoned R-1ac(A) where lots are typically one acre in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the 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 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-1ac(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-1ac(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted “enlarged site plan, site section” document as a condition, the height of the structure on the site would be limited to what is shown on this document.

Timeline:

- May 9, 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 assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”
- 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 1 p.m., 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 8, 2016: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

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 with comments were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: JUNE 29, 2016

APPEARING IN FAVOR: Jeffrey R. Bragalone, Dallas, TX
Signe Smith, 6565 Axton Lane, Dallas, TX

APPEARING IN OPPOSITION: Kent Saunders, 4211 Lawther, Dallas, TX
Mike Coker, 31121 Canton, Dallas, TX
James Archer, 4109 W. Lawther, Dallas, TX

2:59 P.M.: Break
3:05 P.M.: Resumed

MOTION #1: Canon

I move that the Board of Adjustment, in request No. **BDA 156-069**, on application of Jeffrey R. Bragalone, grant a 5 foot, 9 inch variance to the height regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted enlarged site plan with site section is required.

SECONDED: Agnich
AYES: 3 – Hounsel, Cannon, Agnich
NAYS: 2 – Brannon, Hill
MOTION FAILED 3 – 2

MOTION #2: Agnich

I move that the Board of Adjustment, in request No. **BDA 156-069**, hold this matter under advisement until **August 17, 2016**.

SECONDED: Hounsel

AYES: 3 – Hounsel, Cannon, Agnich

NAYS: 2 – Brannon, Hill

MOTION PASSED 3 – 2

FILE NUMBER: BDA156-046(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the visual obstruction regulations at 504 N. St. Paul Street. This property is more fully described as Lot 2, Block 2/243, and is zoned CA-1(A), which requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to locate items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 504 N. St. Paul Street

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a special exception to the visual obstruction regulations is made to construct and maintain a parking garage structure in the 20’ visibility triangle where an alley intersects with N. St. Paul Street on a site developed with a surface parking lot use.

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:

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends that this request be denied commenting that no new site plan was provided. As a result, his recommendation made to the Board in May remains: “The proposed structure encroaching within the visibility triangle creates a safety hazard to pedestrian traffic.”

- The applicant had not substantiated how the location of the proposed structure in the 20' visibility triangle where an alley intersects with N. St. Paul Street does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: CA-1(A) (Central Area)
North: CA-1(A) (Central Area)
South: CA-1(A)H/23 (Central Area)(Historic)
East: CA-1(A) (Central Area)
West: CA-1(A) (Central Area)

Land Use:

The subject site is developed as a surface parking lot. The areas to the north, east, south, and west are developed with mostly with office uses.

Zoning/BDA History:

1. BDA156-047, Property at 504 N. St. Paul Street (part of the subject site) On May 18, 2016, the Board of Adjustment Panel B will consider a special exceptions to the mandatory pedestrian skybridge standards are made to construct and maintain a pedestrian skybridge over Wenchell Lane that would connect an existing church structure to a proposed parking garage that would have an interior passageway width of less than 10 feet; and would be located within 300' of an historic overlay district.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a parking garage structure in the 20' visibility triangle where an alley intersects with N. St. Paul Street on a site developed with a surface parking lot use.
- 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 Dallas Development Code states the term “visibility triangle” means in all zoning districts, “the portion of a lot within a triangular area formed by connecting together

the point of intersection of the edge of a driveway or alley and an 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 and the street curb line 20 feet from the intersection.”

- The applicant has submitted a site plan and an elevation indicating a parking garage structure to be located in the 20’ visibility triangle where an alley intersects with N. St. Paul Street. This site plan and elevation was part of the May 18th docket. As of 1 p.m., June 17th, no new information had been submitted to staff on this application.
- On May 5, 2016, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” commenting: “The proposed structure encroaching within the visibility triangle creates a safety hazard to pedestrian traffic.”
- On June 16, 2016, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” commenting: “No new site plan provided. Previous recommendation of denial remains.”
- The applicant has the burden of proof in establishing how granting this request for a special exception to the visual obstruction regulations to construct and maintain a parking garage structure in the 20’ visibility triangle where an alley intersects with N. St. Paul Street does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in the 20’ visibility triangle where an alley intersects with N. St. Paul Street to that what is shown on these documents – a parking garage structure.

Timeline:

February 26, 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.

April 12, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

April 12, 2016: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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 3, 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.

- May 5, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: "The proposed structure encroaching within the visibility triangle creates a safety hazard to pedestrian traffic."
- May 18, 2016: The Board of Adjustment Panel B conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on June 29, 2016.
- May 19, 2016: The Board Administrator wrote the applicant a letter that provided the board's action; and the June 8th deadline to submit additional evidence for staff to factor into their analysis; and the 1 p.m., June 17th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- 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 16, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: "No new site plan provided. Previous recommendation of denial remains."

BOARD OF ADJUSTMENT ACTION: MAY 18, 2016

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA156-046**, hold this matter under advisement until **June 29, 2016**.

SECONDED: Cannon

AYES: 5 – Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: JUNE 29, 2016

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm #B, Dallas, TX

APPEARING IN OPPOSITION: No one

***Member Hill was excused and left the meeting and did not vote on this matter.**

MOTION: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA 156-046**, on application of Robert Baldwin, **grant** the request of this applicant to maintain items in a visibility triangle as special exceptions to the visual obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and elevation dated June 23, 2016 is required.

SECONDED: Canon

AYES: 4 – Hounsel, Brannon, Cannon, Agnich

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA156-058(SL)

BUILDING OFFICIAL'S REPORT: Application of Jonathan Spencer for special exceptions to the landscape and off-street parking regulations at 10141 E. Northwest Highway. This property is more fully described as Lot 2A, Block C/7480, and is zoned CR, which requires mandatory landscaping and requires off-street parking to be provided. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to construct and maintain a structure for a restaurant with drive-in or drive-through service use, and provide 17 of the required 22 parking spaces, which will require a 5 space special exception to the off-street parking regulations.

LOCATION: 10141 E. Northwest Highway

APPLICANT: Jonathan Spencer

REQUESTS:

The following requests are made on a site that is being developed as restaurant with drive-in or drive-through service use/structure (Starbucks):

1. A request for a special exception to the landscape regulations is made to construct and maintain the structure/use, and not fully meet the landscape regulations.
2. A request for a special exception to the off-street parking regulations of 5 spaces is made to construct and maintain the restaurant with drive-in or drive-through service structure/use that has approximately 2,200 total square feet (1,700 square foot structure with an approximately 530 square foot covered patio), and provide 17 (or 77 percent) of the 22 required off-street parking spaces.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

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 (landscape special exception):

Approval, subject to the following condition:

- Compliance with the submitted revised alternate landscape plan is required.

Rationale:

- The Chief Arborist recommends approval of the request, specifically stating the special exception will not adversely affect neighboring properties and the full application of the street tree requirement will apply an unreasonable burden to the proposed use of the property. (The features shown on the submitted revised alternate landscape plan meet all aspects of Article X landscape requirements with the exception of the number of street trees which cannot be provided given a combination of limited lot space for parking and maneuverability for the use, and existing public utility easement conflicts along the street frontage).

STAFF RECOMMENDATION (parking special exception):

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of the request because the applicant had not demonstrated how a reduction in parking is warranted, and how the special exception would not create a traffic hazard or increase traffic congestion.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community retail)
North: CR (Community retail)
South: CR (Community retail)
East: CR (Community retail)
West: CR (Community retail)

Land Use:

The subject site is being developed as a restaurant with drive-in or drive-through service use/structure (Starbucks). The areas to the north, east, south, and west are developed with commercial/retail 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 (landscape special exception):

- This request focuses constructing and maintaining a restaurant with drive-in or drive-through service use/structure, and not fully meeting the landscape regulations, more specifically not providing the required number of street trees.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment B). The memo states how this request is triggered by a new construction of a commercial retail use.
- With regard to how the proposal is deficient to the landscape regulations, the Chief Arborist stated that the revised alternate landscape plan provides for 3 large street trees. Article X, Sec. 51A-10.125(b)(4), requires 1 large street tree, of 3" caliper or greater, per 50 linear feet of frontage, and a minimum of two. Six trees are required for the approximately 275 feet of total street frontage.
- The Chief Arborist's memo lists the following factors for consideration:
 1. A combination of limited lot space for parking and maneuverability for the use, and existing public utility easement conflicts along the street frontage, restricts available space for large street trees in the required space within 30 feet of the curb.
 2. Additional planting areas east of the building will enhance and layer the screening of parking and street trees between Ferndale and the planned use.
 3. All other Article X landscape requirements for site trees, parking lot trees, and two design standards (screening of off-street parking and enhanced pedestrian pavement) are met.
- The City of Dallas Chief Arborist recommends approval of the proposed revised landscape plan because the special exception will not adversely affect neighboring properties, and the full application of the street tree requirement will apply an unreasonable burden to the proposed use of the property.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted revised landscape plan as a condition to the request, the site would be provided exception from full compliance with the required number of street trees on the subject site.

GENERAL FACTS/STAFF ANALYSIS (parking special exception):

- This request focuses on constructing and maintaining a restaurant with drive-in or drive-through service use that has approximately 2,200 total square feet (1,700 square foot structure with an approximately 530 square foot covered patio), and providing 17 (or 77 percent) of the 22 required off-street parking spaces.

- The Dallas Development Code requires the following off-street parking requirement:
 - Restaurant with drive-in or drive-through service use: 1 space per 100 square feet of floor area.
- The Sustainable Development Department Project Engineer has submitted a review comment sheet marked “Recommends that this request be denied” commenting “The applicant did not demonstrate how a reduction in parking is warranted, and that the special exception would not create a traffic hazard or increase traffic congestion”.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the construct and maintain the restaurant with drive-in or drive-through service use does not warrant the number of off-street parking spaces required, and
 - The special exception of 5 spaces (or a 23 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 5 spaces shall automatically and immediately terminate if and when the construct and maintain the restaurant with drive-in or drive-through service use is changed or discontinued, the applicant would be allowed to construct and maintain the structure on the site with this specific use and square footage, and provide 17 of the 22 code required off-street parking spaces. (If denied, the applicant could construct and maintain the 1,700 square foot restaurant with drive-in or drive-through service use without covering the patio space, and provide the required number of off-street parking spaces).

Timeline:

- April 8, 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 B.
- May 11, 2016: The Board Administrator emailed the applicant and emailed 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 1 p.m., 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 7, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (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 16, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "The applicant did not demonstrate how a reduction in parking is warranted, and that the special exception would not create a traffic hazard or increase traffic congestion".
- June 20, 2016: The Chief Arborist submitted a memo on the landscape special exception component of this application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: JUNE 29, 2016

APPEARING IN FAVOR: Jonathan Spencer, 2009 West Littleton Blvd, Littleton, CO
Grey Stogner, 12720 Hillcrest, #650, Dallas, TX

APPEARING IN OPPOSITION: Nancy Baker, 8923Liptonshire Dr., Dallas, TX

MOTION #1: Canon

I move that the Board of Adjustment, in Appeal No. **BDA 156-058**, on application of Jonathan Spencer, **grant** the special exception to the landscape regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that: (1) strict compliance with the requirements will unreasonably burden the use of the property; and (2) the special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised alternate landscape plan is required.

SECONDED: Agnich

AYES: 4 –Honsel, Brannon, Cannon, Agnich

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

MOTION #2: Canon

I move that the Board of Adjustment, in request No. **BDA 156-058**, on application of Jonathan Spencer, **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: Agnich

AYES: 4 – Hounsel, Brannon, Cannon, Agnich

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

MOTION: Cannon

I move to adjourn this meeting.

SECONDED: Agnich

AYES: 4 – Hounsel, Brannon, Cannon, Agnich

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

4:44 P.M. Board Meeting adjourned for **June 29, 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.