

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
WEDNESDAY, SEPTEMBER 21, 2016**

MEMBERS PRESENT AT BRIEFING: Alex Winslow, regular member, Wini Cannon, regular member, Lorlee Bartos, alternate member and Ricardo Martinez, alternate member

MEMBERS ABSENT FROM BRIEFING: Scott Hounsel, Vice-Chair, Larry Brannon, regular member

MEMBERS PRESENT AT HEARING: Alex Winslow, regular member, Wini Cannon, regular member, Lorlee Bartos, alternate member and Ricardo Martinez, alternate member

MEMBERS ABSENT FROM HEARING: Scott Hounsel, Vice-Chair, Larry Brannon, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Mary McCollough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, 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, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

11:17 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 21, 2016 docket.**

1:02 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B August 17, 2016, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 21, 2016

MOTION: None

The minutes were approved.

FILE NUMBER: BDA156-086(JM)

BUILDING OFFICIAL’S REPORT: Application of Terry France for a special exception to the fence height regulations at 9823 Kilarney Drive. This property is more fully described as Lot 8, Block 8/5371, 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/or maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations.

LOCATION: 9823 Kilarney Drive

APPLICANT: Terry France

REQUEST:

A request for special exceptions to the fence height regulations of up to 4’ are made to construct and/or maintain an 8’ wooden fence along the west boundary of the site, and a 7’ wooden fence along Tranquilla Drive.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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-7.5(A) (Single family district 7,500 sq. ft.)
North: R-7.5(A) (Single family district 7,500 sq. ft.)
South: R-7.5(A) (Single family district 7,500 sq. ft.)
East: R-7.5(A) (Single family district 7,500 sq. ft.)
West: R-7.5(A) (Single family district 7,500 sq. ft.)

Land Use:

The subject site is developed with a single family home. Properties in all directions are developed with single family uses.

Zoning/BDA History:

- | | |
|---|--|
| 1. BDA123-108,
Property at 1067
Tranquilla Drive (lot
west of the subject
site) | On November 20, 2013, the Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations of 6' 6" in conjunction with constructing and maintaining an approximately 400 square foot two-vehicle garage addition to an existing one-story single family home with an approximately 1,700 square foot building footprint, part of which would be located in the site's 25' front yard setback. |
|---|--|

GENERAL FACTS/STAFF ANALYSIS:

- The current request is for up to an 8' high wooden board-on-board privacy fence within the 25' front yard building setback along Tranquilla Drive.
- 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 a corner lot in an R-7.5(A) single family district which has a 25' front yard setback. This site is considered to have two front yard setbacks – a 25' front yard setback along Kilarney Drive (the shorter of the two frontages of the subject site and generally considered the front yard) and a 25' front yard setback along Tranquilla Drive (the longer of the two frontages which is typically considered a side yard requiring a 5' side yard setback). This site has a 25' front yard setback along Tranquilla Drive given that while it is the longer of the two frontages and usually considered a side yard, it is a front yard notwithstanding in order to maintain continuity of the established front yard setback along this street frontage because homes/lots to the west "front" to Tranquilla Drive.
- The applicant has submitted a site plan/elevation of the request with notations indicating that the fence reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan:
 - The fence protrudes up to 19' into the 25' setback along Tranquilla Drive.
 - The request section begins at the northeast corner of the property along Kilarney Drive for 8'. This section of the fence is 7' high.

- The fence then turns west down Tranquilla Drive for about 44' before providing 20' corner clips for the gated driveway entrance, and continuing 40' to the northwest corner of the property. A total of 84' of fencing runs along Tranquilla Drive, all within the 25' setback. This section of the fence is also 7' high.
- Finally, the fence turns south down the shared property line to the west for 11' within the 25' setback. This portion of the fence is 8' high.
- The entire request section is either within the property boundaries, or located on the property line (to the west, southwest).
- No part of the 25' setback on Kilarney Drive is encroached upon.
- Some properties in the immediately surrounding areas have fences higher than the 4' maximum. Some would seem to require a special exception, but do not have the double front yard issue, therefore are in compliance.
- As of September 9, 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 heights and materials as shown on this document.

TIMELINE:

- June 15, 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.
- August 4, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- August 12, 2016: The Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 1st 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.”
- September 6, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans

Examiner/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 SEPTEMBER 21, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move to grant that the Board of Adjustment grant application **BDA 156-086** 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Cannon**

AYES: 4 –Winslow, Cannon, Bartos, Martinez

NAYS: 0 –

MOTION PASSED 4 – 0(unanimously)

FILE NUMBER: BDA156-094(JM)

BUILDING OFFICIAL’S REPORT: Application of Gregory Griffith, represented by Trey Crews, for a special exception to the landscape regulations at 9221 Midway Road (aka: 4255 W. Northwest Highway). This property is more fully described as Lot 8A, Block 5082, and is zoned CR, which requires mandatory landscaping. 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.

LOCATION: 9221 Midway Road (aka: 4255 W. Northwest Highway)

APPLICANT: Gregory Griffith
 Represented by Trey Crews

September 21, 2016 Public Hearing Notes:

- The Senior Planner submitted additional information from the applicant to the Board at the briefing which included a revised alternate landscape plan (see Attachments B & C).

REQUEST:

A request for a special exception to the landscape regulations to construct and maintain a structure and provide an alternate landscape plan, not fully meeting the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS:

The board may grant a special exception to the requirements 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 under Subsection (a), the board shall consider the following factors:

1. The extent to which there is residential adjacency.
2. The topography of the site.
3. The extent to which landscaping exists for which no credit is given under this article.
4. The extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale for approval:

- Staff concurs with the Chief Arborist and recommends approval of this request with the condition imposed above because strict compliance with this article will unreasonably burden the use of this property and this special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	Community Retail with D-1 Overlay, CR-D1
<u>North:</u>	R-10(A), Single Family Residential
<u>Northeast & East:</u>	PD No. 70 for Community Retail Uses
<u>Southeast:</u>	TH-3(A), Townhome
<u>Southwest & West:</u>	Community Retail with D Overlay, CR-D

Land Use:

The subject site is currently a retail center. To the immediate north are single family uses. To the northeast and east are more retail and personal services uses. There are higher density residential structures to the southeast (either townhomes or multifamily uses). An institutional use is found to the south, across West Northwest Highway (church). There are more retail uses and vacant land to the southwest and west.

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 constructing/maintaining structures on a lot currently developed, and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the features shown on the submitted alternate landscape plan would not conform to Article X landscape regulation standards related to mandatory landscaping requirements and design standards.
- The new construction of a proposed retail development triggers compliance with Article X landscape regulations. The applicant plans to tear down the existing structure. In order to build a new structure, they must comply with current codes, including landscaping (Article X).
- The proposed revised alternate landscape plan is deficient in the following:
 - a. Street trees – Sec 51A-10.125(b)(4) – 6 street trees required; 3 trees provided
 - b. Buffer plant materials – Sec 51A-10.125(b)(7) – 4 large trees are required within the perimeter landscape buffer strip for residential adjacency. Two trees are provided, which includes one existing 16” tree.
 - c. Design standard – Sec 51A-10.126(i) – the 2nd design standard (enhanced pedestrian walkway) is, by the applicant’s calculation, short of full compliance with minimum area requirements by 78 square feet.
- The City of Dallas Chief Arborist states in a memo (see Attachment A) that the request in this case is triggered by the new construction of a retail development.
- The Chief Arborist listed several factors for consideration:
 - a. The property will be two combined lots which have a sanitary sewer easement in the northern portion extending across the lots, with the landscape buffer set above a retaining wall which is to remain for a portion of the distance. Recent review has suggested the sanitary sewer is set far enough south within the eastern half of the site to qualify the additional north perimeter tree in the buffer.
 - b. An existing fence and an underground sanitary sewer easement along the north perimeter impacts permeable planting space on the western section of the buffer. The fence runs through the center of the perimeter buffer and crosses the property boundary into the residential lot to the north, and protects a large

shrub on that property. It has been stated by the applicant the fence will remain intact. A new sidewalk will project through a portion of the buffer for safe walkable passage from Midway Road to the retail site away from the busy street front. The perimeter buffer area is in compliance.

- c. The small lot size, parking, safe vehicular maneuvering, and the building's floor area, have restricted landscape area in the street front area. The existing drive entries will remain open and this leaves limited distance for planting. The applicant has adjusted the design for Midway Road to place two large trees in the space for street trees which will be set away from the drive entries and the visibility triangles. Any shrubs in the visibility triangle will be required to be kept below 18 inches in height. One additional similar large tree species is provided along the narrow stretch at Northwest Highway. Additional small trees are also provided along that frontage. Interior crepe myrtles will also add as suitable ornamental plants with color.
- The chief arborist recommends approval of the proposed revised alternate landscape plan because full compliance with the requirements of Article X will unreasonably burden the use of the property. Furthermore, the chief arborist believes that the reduced landscape design will not negatively impact neighboring properties, but will enhance this corner area.
 - The applicant has the burden of proof in establishing the following:
 - The special exception complies with Section 51(A) 10.110.
 - If the board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to the landscape regulations.

TIMELINE:

July 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.

August 4, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

August 12, 2016: The Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 1st 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."

September 6, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review

team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/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.

BOARD OF ADJUSTMENT ACTION SEPTEMBER 21, 2016

APPEARING IN FAVOR: Steve Kendall, 7068 Ledgestone Commons, Bartlett, TX
Ken Eason, 4717 Miron, Dallas, TX

APPEARING IN OPPOSITION: LaRue Henry, 4803 Shadywood, Dallas, TX
Timothy Dickey, 3134 Lockwood Lane, Dallas
Audrey Schlichenmaier, 3743 Dunhaven Rd, Dallas,
TX
Stephanie Dye, 9831 Gooding Dr., Dallas, TX
Nick Moore, 4188 Wilada, Dr., Dallas, TX

MOTION: Cannon

I move that the Board of Adjustment, in Appeal No. **BDA 156-094**, on application of Gregory Griffith, **grant** the special exception to the landscape regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property and 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: Bartos

AYES: 4 –Winslow, Cannon, Bartos, Martinez

NAYS: 0 –

MOTION PASSED 4 – 0(unanimously)

FILE NUMBER: BDA156-096(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a variance to the front yard setback regulations and a special exception to the fence height regulations at 4815 Brookview Drive. This property is more fully described as part of Lot 1, Block 11/5584, and is zoned R-1ac(A), which requires a front yard setback of 40 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a structure and provide a 15 foot front yard setback, which will require a 25 foot variance to the front yard setback regulations, and to construct and maintain a 10 foot high fence, which will require a 6 foot special exception to the fence height regulations.

LOCATION: 4815 Brookview Drive

APPLICANT: Robert Baldwin of Baldwin and Associates

September 21, 2016 Public Hearing Notes:

- The Board Administrator submitted additional information from the applicant to the Board at the briefing (see Attachment A).

REQUESTS:

The following requests have been made on a site that is undeveloped:

1. A request for a variance to the front yard setback regulations of up to 25' is made to construct and maintain a single family structure and spa structure, part of which would be located as close as 15' from the one of the site's two front property lines (Sunnybrook Lane) or as much as 25' into this 40' front yard setback.
2. A request for a special exception to the fence height regulations of 6' is made to construct and maintain a 10' high solid "CMU garden wall with stucco finish" fence in the 40' Sunnybrook Lane 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.

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 (variance):

Denial

Rationale:

- Staff concluded that there was no property hardship to the site that warranted a front yard variance. While staff recognized that the site was slightly irregular in shape with two front yard setbacks, these features did not appear to preclude it from being developed in a manner commensurate with the development upon other parcels of land with the same R-1ac(A) zoning, particularly since the subject site is over 2 acres in area or over twice the size as most lots in an R-1ac(A) zoning district.
- The applicant had not substantiated how the physical features of the flat, somewhat irregularly shaped, 2.2 acre site with two front yard setbacks preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classification while simultaneously complying with code provisions including front yard setback regulations.

STAFF RECOMMENDATION (special exception):

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 undeveloped. The areas to the north, south, and west are developed with single family uses; and the area to the east is undeveloped.

Zoning/BDA History:

1. BDA145-008, Property at 9246 Sunnybrook Lane (the property south of the subject site)

On January 20, 2015, the Board of Adjustment Panel A granted a request for a special exception to fence height regulations of 4' and imposed the submitted revised site plan and revised elevation as a condition to the request.

The case report stated that the request was made to construct and maintain an 8' high limestone veneer masonry fence towards the northwest of the property, a 6'-2" high painted steel fence between 2 evergreen hedges

2. BDA88-054, Property at 9346 Sunnybrook Lane (the property north of the subject site)

towards the west and south sides of the property, one 6'-2" high painted steel service gate towards the south of the property, and one 8' high painted steel vehicular gate towards the northwest of the property, parallel and perpendicular to Sunny Brook Lane, in the 40' required front yard on a site developed with a single family home/use.

On May 10, 1998, the Board of Adjustment granted a request for a special exception to fence height regulations of 6' and imposed the following condition: "subject to a revised elevation and landscape plan and site plan to be approved."

The case report stated that the request was made to construct and maintain a wrought iron picket fence with 8' high gates and columns with light fixtures on top.

GENERAL FACTS/STAFF ANALYSIS (variance):

- This request for a variance to the front yard setback regulations of up to 25' focuses on constructing and maintaining single family home and spa structures, part of which are proposed to be located as close as 15' from one of the site's two front property lines (Sunnybrook Lane) or as much as 25' into this 40' front yard setback.
- The site is zoned R-1ac(A) which requires a minimum front yard setback of 40'.
- The subject site is located at the northeast corner of Brookview Drive and Sunnybrook Lane.
- Given the single family zoning and location of the corner lot subject site, it has two 40' front yard setbacks. The site has a front yard setback along Brookview Drive (the shorter of the two frontages of the subject site which is always a front yard in this zoning), and the along Sunnybrook Lane (the longer of the two frontages which is typically considered a side yard but is a front yard notwithstanding) in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the north "front" on Sunnybrook Lane.
- A scaled site plan has been submitted indicating that portions of the proposed single family home and spa structures are located as close as 15' from the Sunnybrook Lane front property line or as much as 25' into this 40' front yard setback.
- The submitted site plan represents structures to encroach only into the site's Sunnybrook Lane front yard setback and not into the site's Brookview Drive front yard setback.
- The applicant has not provided the square footage of the proposed structures on the site.
- The applicant has not provided a floor plan of the proposed structures on the site.
- According to DCAD records, there are "no main improvement" for the property addressed at 4815 Brookview Drive and "no additional improvements".

- The subject site is flat, irregular in shape, and according to the submitted application is 2.242 acres in area. The site is zoned R-1ac(A) where lots are typically 1 acre in area.
- Most lots in the R-1ac(A) zoning district have one 40' front yard setback, two 10' side yard setbacks, and one 10' rear yard setback; this site has two, 40' front yard setbacks, and two, 10' side yard setbacks.
- The subject site that ranges in width from approximately 80' on the north to approximately 280' on the south has 30' – 230' of width left for development once a 40' front yard setback is accounted for on the west and a 10' side yard setback is accounted for on the east. If this lot were more typically with one front yard, two side yards, and one rear yard, the lot would have 60' – 260' of width left for development.
- 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-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 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 is located as close as 15' from the site's Sunnybrook Lane front property line (or as much as 25' into this 40' front yard setback).

GENERAL FACTS/STAFF ANALYSIS (special exception):

- This request for a special exception to the fence height regulations of 6' focuses on constructing and maintaining a 10' high solid "CMU garden wall with stucco finish" fence in the site's Sunnybrook Lane front yard setback.
- The subject site is zoned R-1ac(A) which requires a 40' front yard setback.
- 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 located at the northeast corner of Brookview Drive and Sunnybrook Lane.
- Given the single family zoning and location of the corner lot subject site, it has two 40' front yard setbacks. The site a front yard setback along Brookview Drive (the shorter of the two frontages of the subject site which is always a front yard in this zoning), and a front yard setback along Sunnybrook Lane (the longer of the two frontages which is typically considered a side yard where a 9' high fence can be

erected by right). However the site has a front yard setback along Sunnybrook Lane in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the north “front” on Sunnybrook Lane.

- A scaled site plan and fence elevation has been submitted indicating a fence proposal that will reach 10’ in height in the 40’ Sunnybrook Lane front yard setback.
- The submitted site plan and fence elevation represents only a fence to exceed 4’ in height in the Sunnybrook Lane front yard setback and not into the site’s Brookview Drive front yard setback.
- Note that while the Board Administrator noted an existing solid brick fence over 4’ high in what appeared to be the Sunnybrook Lane front yard setback, there is no notation of this existing fence on the applicant’s submitted plans, and, as a result, this application will not provide any relief to any noncompliance this fence may have with code.
- The following information was gleaned from the submitted site plan:
 - The proposal is represented as being two sections of fence that are oriented diagonally to Sunnybrook Lane. The two fence sections proposed to be located in the Sunnybrook Lane front yard setback are approximately 14’ – 15’ in length, approximately 26’ – 30’ from the property line or 30’ – 31’ from the pavement line.
- The proposal is located across from two lots developed with single family homes, neither of which have visible fences over 4’ in height in the front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Sunnybrook Lane (from Brookview Drive approximately 400 feet to the north of the subject site) and noted two other fences that appeared to be above 4’ in height: an approximately 6’ high open wrought iron picket fence was noted to the west of the site with no recorded BDA history, and an approximately 6 high open wrought iron picket fence was noted directly north that appeared to be a result of a fence height special exception granted by the Board in 1998: BDA88-054 (see the “Zoning/BDA History” section of this case report for further details).
- As of September 9th, 2016, one letter had been submitted in support of the request, and one petition with 15 signatures and seven letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5’ will not adversely affect neighboring property.
- Granting this special exception request of 5’ with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4’ in height in the Sunnybrook Lane front yard setback to be constructed and maintained in the location and of the heights and material as shown on these documents.

Timeline:

July 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.

August 4, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

August 5, 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 August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

September 6, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/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 SEPTEMBER 21, 2016

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

APPEARING IN OPPOSITION: No one

MOTION: **Martinez**

I move that the Board of Adjustment, in Appeal No. **BDA156-096**, on application of Robert Baldwin, **deny** the variance and special exception **without prejudice** on the applicant's request.

SECONDED: **Bartos**

AYES: 4 – Winslow, Cannon, Bartos, Martinez

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

MOTION: **Cannon**

I move to adjourn this meeting.

SECONDED: Bartos

AYES: 4 – Winslow, Cannon, Bartos, Martinez

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

1:47 P.M. Board Meeting adjourned for **September 21, 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.