

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES AUDITORIUM
TUESDAY, SEPTEMBER 22, 2015**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Larry French, regular member, Mark Rieves, regular member, Paula Leone, regular member, and Jim Gaspard alternate member

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Larry French, regular member, Mark Rieves, regular member, Paula Leone, regular member, and Jim Gaspard alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator
Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, David Lam, Engineering, 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 **September 22, 2015** docket.

1:00 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 August 25, 2015 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 22, 2015

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA 145-091(SL)

BUILDING OFFICIAL'S REPORT: Application of Lesley Hamilton for special exceptions to the visual obstruction regulations at 5547 Merrimac Avenue. This property is more fully described as Lot 13, Block 6/2198, and is zoned CD-9, which requires a 20 foot visibility triangle at driveway and alley approaches. The applicant proposes to locate and/or maintain items in required visibility triangles, which will require a special exception to the visual obstruction regulations.

LOCATION: 5547 Merrimac Avenue

APPLICANT: Lesley Hamilton

September 22, 2015 Public Hearing Notes:

- The Board Administrator circulated a revised elevation submitted by the applicant to the Board at the briefing.

REQUESTS:

Requests for special exceptions to the visual obstruction regulations are made to replace and maintain an existing 6' high solid wood fence and/or swinging gate in the following same locations on a site developed with a single family home:

- in the 20' visibility triangles on both sides of the driveway into the site from Worcola Avenue; and
- in the 20' visibility triangle where the alley on the north side of the site meets Worcola Avenue.

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:

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer had no objections to these requests.
- The applicant had substantiated how the location of the replacement fence in the 20' visibility triangles on both sides of the driveway into the site from Worcola Avenue and in the 20' visibility triangle where the alley on the north side of the site meets Worcola Avenue does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: CD 9 (Conservation District)
North: CD 9 (Conservation District)
South: CD 9 (Conservation District)
East: CD 9 (Conservation District)
West: CD 9 (Conservation District)

Land Use:

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

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:

- These requests focus on replacing and maintaining a 6' high solid wood fence and/or swinging gate in the same locations in the 20' visibility triangles on both sides of the driveway into the site from Worcola Avenue and in the 20' visibility triangle where the alley on the north side of the site meets Worcola Avenue on a site developed with a single family home.
- 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).

- A site plan and elevation have been submitted indicating portions of a fence located in the 20' visibility triangles on both sides of the driveway into the site from Worcola Avenue and in the 20' visibility triangle where the alley on the north side of the site meets Worcola Avenue.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to replace and maintain portions of a 6' high solid wood fence and/or swinging gate located in the same locations in the 20' visibility triangles on both sides of the driveway into the site from Worcola Avenue and in the 20' visibility triangle where the alley on the north side of the site meets Worcola Avenue does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in the 20' drive approach visibility triangles into the site from Worcola Avenue and in the 20' visibility triangle where the alley on the north side of the site meets Worcola Avenue to that what is shown on these documents – a 6' high solid wood fence/gate.
- Note that if the Board were to grant the applicant's request for a special exception to the visual obstruction regulations, and impose the submitted site plan and elevation as a condition, no additional relief would be provided to the applicant regarding any existing/proposed noncompliance on the subject site to any code provision.

Timeline:

- June 12, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 19, 2015: The Board Administrator contacted 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 September 2nd deadline to submit additional evidence for staff to factor into their analysis; and the September 11th 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 8, 2015: 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 11, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 22, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: French

I move to grant that the Board of Adjustment grant application **BDA 145-091** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Leone

AYES: 5 – Nolen, French, Rieves, Leone, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-101(SL)

BUILDING OFFICIAL'S REPORT: Application of Peter Kavanagh for a special exception to the fence height regulations at 4520 Cherokee Trail. This property is more fully described as Lot 6, Block O/4984, and is zoned PD-455, 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: 4520 Cherokee Trail

APPLICANT: Peter Kavanagh

September 22, 2015 Public Hearing Notes:

- The applicant submitted a revised site plan to the Board at the public hearing (see Attachment A).

REQUEST:

A request for a special exception to the fence height regulations of 4' is made to: 1) replace an existing 8' high, approximately 90' long wood fence with a new 8' high wood fence; and 2) to continue the new 8' high wood fence approximately 60' further in length northward in the site's 30' front yard setback along Pomona Road on a site that is currently vacant.

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: PD 455 (Planned Development)
North: PD 455 (Planned Development)
South: PD 455 (Planned Development)
East: PD 455 (Planned Development)
West: PD 455 (Planned Development)

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 developed with a park and a school (Bluff View Park and the Sudie L. Williams Elementary School).

Zoning/BDA History:

1. BDA 145-076, Property at 4519 Cherokee Trail (the lot north of the subject site) On August 25, 2015, the Board of Adjustment Panel A denied a request for a special exception to the fence height regulations of 1' without prejudice. The case report stated the request was made to maintain an open picket/post fence that ranges in height given grade variations on the property from 4' 2 1/2" – 4' 6 1/2" on a site developed with a single family home.
2. BDA 990-201, Property at 4501 Cherokee Trail (three lots northwest of the subject site) On February 15, 2000, the Board of Adjustment Panel B denied a request for a special exception to the fence height regulations of 4.5' without prejudice. The case report stated the request was made to construct and maintain a 6' high open wrought iron picket fence with 6.5' high stone/brick columns, an 8' high open wrought iron gate with 8.5' high columns.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on replacing an existing 8' high, approximately 90' long wood fence with a new 8' high wood fence; and to continuing the new 8' high wood fence approximately 60' further in length northward in the site's 30' front yard setback along Pomona Road on a site that is currently vacant.
- 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 southwest corner of Cherokee Trail and Pomona Road in PD 455.
- Given the single family zoning and location of the corner lot subject site, it has two 30' front yard setbacks – a 30' front yard setback along Pomona Road (the shorter of the two frontages of the subject site) and a 30' front yard setback along Cherokee Trail (the longer of the two frontages that while usually is considered a side yard is a front yard notwithstanding in order to maintain continuity of the established front yard setback along this street frontage where homes to the west that "front" northward to Cherokee Trail).
- The applicant has submitted a site plan and elevation of the proposal in the front yard setback indicating that it reaches a maximum height of 8'.
- The submitted site plan and elevation only represents a fence to exceed 4' in height in the site's Pomona Road front yard setback.
- The following additional information was gleaned from the submitted site plan:

- The proposal is represented as being approximately 150' in length parallel to the Pomona Road and approximately 6' perpendicular to this street on the north side of the site in the Pomona Road 30' front yard setback.
- The fence is represented to be located at a range of on the Pomona Road front property line to 30' from this front property line or at a range of about 25' to 55' from the Pomona Road pavement line.
- The 8' high Pomona Road wood fence proposal is located on the site where no single family home has direct frontage – a park (Bluff View Park) fronts the fence on the subject site and has an approximately 4' high chain link fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Pomona Road (approximately 400 feet north and south of the site) and noted one other visible fences above 4 feet high which appeared to be located in a front yard setback – an approximately 6' high chain link fence south of the site at the Sudie L. Williams Elementary School.
- As of September 11, 2015, no letters had been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and 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:

- July 24, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 19, 2015: The Board Administrator contacted 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 September 2nd deadline to submit additional evidence for staff to factor into their analysis; and the September 11th 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 8, 2015: 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 22, 2015

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley Ste A, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Nolen

I move that the Board of Adjustment, in request No. **BDA 145-101**, hold this matter under advisement until **October 20, 2015**.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Leone, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-089(SL)

BUILDING OFFICIAL'S REPORT: Application of Kevin James Firkus for special exceptions to the visual obstruction regulations at 5638 Merrimac Avenue. This property is more fully described as Lot 10, Block 4/2196, and is zoned CD-9, which requires 20 foot visibility triangles where a driveway or an alley intersects a street. The applicant proposes to locate and/or maintain a items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5638 Merrimac Avenue

APPLICANT: Kevin James Firkus

September 22, 2015 Public Hearing Notes:

- The applicant submitted photographs to the Board at the public hearing.

REQUESTS:

Requests for special exceptions to the visual obstruction regulations are made to maintain an 8’ high solid fence and/or sliding gate in the following locations on a site developed with a single family home:

- in the 20’ visibility triangles on both sides of the driveway into the site from Greenville Avenue; and
- in the 20’ visibility triangle where the alley on the south side of the site meets Greenville Avenue.

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 had recommended that these requests be denied commenting “property is located adjacent to Greenville Avenue which includes sidewalks and heavy vehicular and pedestrian traffic; the gated fence and its visual obstruction may pose traffic hazards.”
- The applicant had not substantiated how the location of the fence located in the 20’ visibility triangles on both sides of the driveway into the site from Greenville Avenue and in the 20’ visibility triangle where the alley on the south side of the site meets Greenville Avenue does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: CD 9 (Conservation District)
North: CD 9 (Conservation District)
South: CD 9 (Conservation District)
East: CD 11 (Conservation District)
West: CD 9 (Conservation District)

Land Use:

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

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:

- These requests focus on maintaining an 8' high solid fence in the 20' visibility triangles on both sides into the site from Greenville Avenue and in the 20' visibility triangle where the alley on the south side of the site meets Greenville Avenue, on a site developed with a single family home.
- 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).
- A site plan and elevation have been submitted indicating portions of a fence located in the 20' visibility triangle on both sides into the site from Greenville Avenue and in the 20' visibility triangle where the alley on the south side of the site meets Greenville Avenue.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: "Property is located adjacent to Greenville Avenue which includes sidewalks and has heavy vehicular and pedestrian traffic. The gated fence and its visual obstruction may pose traffic hazards."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain portions of an 8' high solid fence/gate located in the 20' visibility triangles on both sides of the driveway into the site from Greenville Avenue and in the 20' visibility triangle where the alley on the south side of the site meets Greenville Avenue does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in the 20' drive approach visibility triangles into the site from Greenville Avenue and in the 20' visibility triangle where the alley on the south side of the site meets Greenville Avenue to that what is shown on these documents – an 8' high solid fence/gate.

Timeline:

June 12, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

August 19, 2015: The Board Administrator contacted 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 September 2nd deadline to submit additional evidence for staff to factor into their analysis; and the September 11th 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 8, 2015: 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 11, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: "Property is located adjacent to Greenville Avenue which includes sidewalks and has heavy vehicular and pedestrian traffic. The gated fence and its visual obstruction may pose traffic hazards."

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 22, 2015

APPEARING IN FAVOR: Kevin James Firkus, 5638 Merrimac Ave, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Rieves**

I move that the Board of Adjustment, in request No. **BDA 145-089**, on application of Kevin James Firkus, **deny** the special exception to maintain items in the visibility triangles **without prejudice** because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: **Nolen**

AYES: 3 – Nolen, French, Rieves

NAYS: 2 – Leone, Gaspard

MOTION PASSED: 3 – 2

FILE NUMBER: BDA 145-094(SL)

BUILDING OFFICIAL’S REPORT: Application of Jose Lara for a special exception to the off-street parking regulations at 1694 Kings Highway. This property is more fully described as Lot 5B, Block 2/4622, and is zoned CD-1 (Subarea 6), which requires off-street parking to be provided. The applicant proposes to construct a structure for single family use, and provide one of the required two off-street parking spaces, which will require a one space special exception to the off-street parking regulations.

LOCATION: 1694 Kings Highway

APPLICANT: Jose Lara

September 22, 2015 Public Hearing Notes:

- The applicant submitted additional written documentation to the Board at the public hearing.

REQUEST:

A request for a special exception to the off-street parking regulations of 1 space is made to construct and maintain a single family home structure/use and provide 1 of the 2 required parking spaces on a site that is under development.

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:

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommended denial of the request concluding: 1) although tandem parking is a possibility to allow up to 2 off-street parking spaces, tandem parking is not recognized by the City of Dallas as an effective means of addressing parking concerns; 2) City of Dallas zoning requirements are comparable to the Institute of Transportation Engineer's Parking Generation guideline's determination that single family residential has a parking demand of 2 parking spaces per dwelling unit; 3) subject property is located in Conservation District 1; 4) there is no alternative on-street parking along the adjacent streets for any deficient parking spaces. King Street and Mary Cliff Road, adjacent to the subject site, do not allow for on-street

parking and have signage indicating so. Mary Cliff Road contains a shared bicycle lane as evident through signage, and striping does not allow for on-street parking; 5) the nearest Public Transit stop is along W. Davis Street approximately 1,900 linear feet from the subject site; and 6) the subject site may allow for an alternative site layout that would be compliant in providing for 2 parking spaces.

- The applicant had not substantiated how 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.

BACKGROUND INFORMATION:

Zoning:

Site: CD 1 (Conservation District)
North: CD 1 (Conservation District)
South: CD 1 (Conservation District)
East: CD 1 (Conservation District)
West: CD 1 (Conservation District)

Land Use:

The subject site is undeveloped. The areas to the north and west are developed with single family uses, and the areas to the east and south are being 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 (parking special exception):

- This request focuses on constructing and maintaining a single family home structure/use and providing 1 of the 2 required parking space.
- The Dallas Development Code requires the following off-street parking requirement:
 - Single family use: one space in R-7.5(A), R-5(A), and TH districts; two spaces in all other districts. No handicapped parking is required.
- The subject site is zoned CD 1 (Conservation District) therefore the single family use on this site is requires two spaces.
- The zoning on the subject site before CD 1 was created in 1998 was MF-2.
- A submitted site plan shows an approximately 12' wide detached garage with an area in front of it that would appear, given its 20' length between it and the property line, to accommodate the length of most vehicles that would be parked in tandem to the one required space provided in the garage.

- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “recommends denial of the request” and supplemental comments stating the following:
 1. Although tandem parking is a possibility to allow up to 2 off-street parking spaces, tandem parking is not recognized by the City of Dallas as an effective means of addressing parking concerns.
 2. City of Dallas zoning requirements are comparable to the Institute of Transportation Engineer’s Parking Generation guideline’s determination that single family residential has a parking demand of 2 parking spaces per dwelling unit.
 3. Subject property is located in Conservation District 1.
 4. There is no alternative on-street parking along the adjacent streets for any deficient parking spaces. King Street and Mary Cliff Road, adjacent to the subject site, do not allow for on-street parking and has signage indicating so. Mary Cliff Road contains a shared bicycle lane, as evident through signage, and striping does not allow for on-street parking.
 5. The nearest Public Transit stop is along W. Davis Street approximately 1,900 linear feet from the subject site; and
 6. The subject site may allow for an alternative site layout that would be compliant in providing for 2 parking spaces.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated single family use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 1 space 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 1 space shall automatically and immediately terminate if and when the single family use is changed or discontinued, the applicant would be allowed to construct and maintain the single family use/structure on the site, and provide 1 of the 2 code required off-street parking spaces.

Timeline:

- July 1, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 19, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- August 19, 2015: The Board Administrator emailed the following information to the applicant:
 - 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 September 2nd deadline to submit additional evidence for staff to factor into their analysis; and the September 11th 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 4, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

September 8, 2015: 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 11, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” and supplemental comments (see Attachment B).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 22, 2015

APPEARING IN FAVOR: Karl Crawley, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gaspard

I move that the Board of Adjustment, in request No. **BDA 145-094**, on application Jose Lara, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 1 space because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 1 space shall automatically and immediately terminate if and when the single family use is changed or discontinued.

SECONDED: French

AYES: 2 –French, Gaspard

NAYS: 3 - Nolen, Rieves, Leone,

MOTION FAILED: 2 – 3

MOTION #2: Nolen

I move that the Board of Adjustment, in request No. **BDA 145-094**, on application of Jose Lara, **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: **Leone**

AYES: 2 – Nolen, Leone

NAYS: 3 – French, Rieves, Gaspard

MOTION FAILED: 2 – 3

***Motion Failed therefore it is deemed denied with prejudice.**

FILE NUMBER: BDA 145-095(DL)

BUILDING OFFICIAL'S REPORT: Application of Juan Salvador Gonzalez for a special exception to the fence height regulations and special exceptions to the visibility obstruction regulations at 1031 N. Jim Miller Road. This property is more fully described as Lot 4, Block 1/6247, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway and alley approaches and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct a 7 foot high fence in a required front yard, which will require a 3 foot special exception to the fence regulation, and to locate and/or maintain items in required visibility triangles, which will require special exceptions to the visibility obstruction regulations.

LOCATION: 1031 N. Jim Miller Road

APPLICANTS: Juan Salvador Gonzalez
Salvador Gonzalez

REQUESTS:

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

1. A request for a special exception to the fence height regulations of 3' is made to maintain a 7' high wooden fence parallel to Rosalinda Lane and parallel to the alley approach from Rosalinda Lane.
2. Requests for special exceptions to the visual obstruction regulations are made to locate and/or maintain items in four visibility triangles:
 - one 20' visibility triangle located at the alley approach from Rosalinda Lane;
 - one 45' visibility triangle located at the street intersection of N. Jim Miller Road and Rosalinda Lane; and
 - two 20' visibility triangles located on both sides of the driveway approach on N. Jim Miller Road.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (FENCE HEIGHT):

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

STAFF RECOMMENDATION (VISUAL OBSTRUCTION):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has indicated that he has no objections to these requests.
- The applicant has substantiated how the location of the wrought iron fence and columns in the two 20' visibility triangles at the driveway approach and the one 45' visibility triangle at the street intersection, along with the location of the wooden fence in the one 20' visibility triangle at the alley approach, as denoted on his submitted site plan, does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (FENCE HEIGHT):

- This request focuses on maintaining a 7' high wooden fence in one of two required front yards on a site developed with a single family residential use.
- The Dallas Development Code states that in all residential districts, except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is located at the northwest corner of N. Jim Miller Road and Rosalinda Lane. Regardless of how the existing structure is oriented to front N. Jim Miller Road, the subject site has two front yard setbacks along both streets. The site has a 30' required front yard along N. Jim Miller Road, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 15' required front yard along Rosalinda Lane, the longer of the two frontages of this corner lot, which is typically regarded as a side yard. But the site's Rosalinda Lane frontage that functions as a side yard is treated as a front yard setback to maintain the continuity of the front yard setback established by the lot to the west zoned R-7.5(A) that fronts/is oriented southward towards Rosalinda Lane.
- An R-7.5(A) Single Family Residential District requires the minimum front yard setback to be 25'. However, the site has both a 30' platted build line along N. Jim Miller Road and a 15' platted build line along Rosalinda Lane, both of which supersede the 25' minimum front yard setback.
- No special exception to the N. Jim Miller Road 30' required front yard is requested.
- The following additional information was gleaned from the submitted site plan:
 - Concerning the 15' required front yard along Rosalinda Lane, the proposal is represented as being approximately 93' in length parallel to the street, and approximately 16' in length parallel to the alley approach at Rosalinda Lane.
 - The proposal is represented as being located approximately 0' from the southern property line, and approximately 0' from the western property line.
- The Current Planner conducted a field visit of the site and surrounding area and noted no other visible fences above 4 feet high which appeared to be located in a front yard setback.
- Two homes front the proposal.
- As of September 11th, no letters have been submitted in support of the request, and one (1) letter has been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' will not adversely affect neighboring property.
- Granting this special exception of 3' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal

exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

- Note that granting the applicant's request for this item and special exceptions to the visual obstruction regulations will not provide any relief to any existing noncompliance that may be on the site related to the front yard setback regulations.

GENERAL FACTS/STAFF ANALYSIS (VISUAL OBSTRUCTION):

- This request focuses on maintaining portions of the wooden fence, wrought iron fence, and columns within the visibility triangles located at the site.
- 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).
- According to an e-mail from the Building Inspection Senior Plans Examiner/Development Code Specialist, the applicant intends to remove the offending vegetation in the 45' visibility triangle located at the street intersection of N. Jim Miller Road and Rosalinda Lane.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain portions of a wooden fence, wrought iron fence, and columns within the visibility triangles located at the site does not constitute a traffic hazard.
- Granting these requests would require the items as described above to be limited to and maintained in the locations, height and materials as shown on these documents.
- Note that granting the applicant's request for this item and a special exception to the fence height regulations will not provide any relief to any existing noncompliance that may be on the site related to the front yard setback regulations.

Timeline:

- June 05, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 27, 2014: The Current Planner emailed the following information to the applicant:
- an attachment that provided the public hearing date and panel that will consider the application; the September 2nd deadline to

submit additional evidence for staff to factor into their analysis; and the September 11th 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 8, 2015: 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 9, 2015: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked, "Has no objections."

September 9, 2015: The Code Compliance Department Manager submitted a review comment sheet marked, "Recommends that this be denied (see comments below or attached)" and added the following comments: "Location currently contains an unpermitted pavilion that was constructed within the front yard setback on south side of this lot. Owner was issued citation but failed to appear, issue remains unresolved."

September 11, 2015: The Building Inspection Senior Plans Examiner/Development Code Specialist sent an e-mail to the Current Planner to advise her that the applicant intends to remove the offending vegetation in the 45' visibility triangle located at the street intersection of N. Jim Miller Road and Rosalinda Lane.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 22, 2015

APPEARING IN FAVOR: Juan Gonzalez, 1031 N. Jim Miller Rd., Dallas, TX

APPEARING IN OPPOSITION: Berth Rowlett, 1035 N. Jim Miller Rd., Dallas, TX

MOTION #2: Leone

I move that the Board of Adjustment, in request No. **BDA 145-095**, on application of Juan Salvador Gonzalez, **grant** the request to maintain items in the visibility triangles at the driveway approach **and** alley approach as a special exception to the visual obstruction regulations 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 submitted site plan and elevation is required.

SECONDED: Gaspard

AYES: 5 – Nolen, French, Rieves, Leone, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Leone

I move that the Board of Adjustment, in request No. **BDA 145-095**, on application of Juan Salvador Gonzalez, **grant** the request to construct and maintain an 7-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 submitted site plan and elevation is required.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Leone, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Leone

I move to adjourn this meeting.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Leone, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

2:27 P. M.: - Board Meeting adjourned for **September 22, 2015**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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