

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
TUESDAY, OCTOBER 18, 2016**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, acting vice-chair, Michael Gibson, regular member, Elizabeth Nelson, regular member, Renee Dutia, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clay Buehrle, Engineering, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Peter Schulte, acting vice-chair, Michael Gibson, regular member, Elizabeth Nelson, regular member, Renee Dutia, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clay Buehrle, Engineering, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 18, 2016** 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 September 20, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2016

MOTION: None

The minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

Approval of the Board of Adjustment Panel A's, 2017 Public Hearing Calendar

BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-100(SL)

BUILDING OFFICIAL'S REPORT: Application of J. Mark Barry for a special exception to the fence height regulations at 4176 Park Lane. This property is more fully described as Lot 24, Block 10/6147, and is zoned R-10(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: 4176 Park Lane

APPLICANT: J. Mark Barry

REQUEST:

A request for a special exception to the fence height regulations of 4' is made to complete and maintain a fence higher than 4' (an 8' high solid cement board fence) in the site's 30' Saranac Drive front yard setback on the subject site that is developed with a single family home.

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-10(A) (Single family district 10,000 square feet)
North: R-10(A) (Single family district 10,000 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: R-10(A) (Single family district 10,000 square feet)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the fence height regulation of 4' focuses on completing and maintaining an 8' high solid cement board fence in the site's 30' Saranac Drive front yard setback on the subject site that is developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is zoned R-10(A) which requires a 30' front yard setback.
- The subject site is located at the west corner of Park Lane and Saranac Drive.
- Given the single family zoning and location of the corner lot subject site, it has two 30' front yard setbacks – a front yard setback along Park Lane (the shorter of the two frontages of the subject site which is always a front yard in this case) and a front

yard setback along Saranac Drive, (the longer of the two frontages which is typically considered a side yard where on this R-10(A) zoned property a 9' high fence could be erected by right). However the site has a front yard setback along Saranac Drive in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the west "front" on Saranac Drive.

- The applicant has submitted a site plan and an 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 Saranac Drive front yard setback.
- The following additional information was gleaned from the submitted site plan:
 - The fence proposal is represented as being approximately 60' in length parallel to the Saranac Drive, and approximately 30' in length perpendicular to this street on the east and west sides of the site in this front yard setback.
 - The fence proposal is represented to be located as close as on the Saranac Drive front property line or approximately 12' from the Saranac Drive pavement line.
- The proposal is located on the site where two single family homes/lots have direct frontage, neither with a fence above 4' in height in the front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Saranac Drive (from Park Lane to approximately 500' west of the site) and noted no other fences above 4 feet high which appeared to be located in the front yard setback.
- As of October 7th, 2016, no letters had been submitted in support of the request, and no 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 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 maintained in the location and of the heights and materials as shown on these documents.

Timeline:

August 18, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 13, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 13, 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 September 28th deadline to submit additional evidence for staff to factor into their analysis; and the 1 p.m., October 7th 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.”

October 4, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, 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: OCTOBER 18, 2016

APPEARING IN FAVOR:

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move to grant that the Board of Adjustment grant application **BDA 156-100(SL)** 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 elevation is required.

SECONDED: **Nelson**

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-102(SL)

BUILDING OFFICIAL’S REPORT: Application of David Nevarez, represented by DeShazo Group, Inc., for a special exception to the off-street parking regulations at 12230 Coit Road. This property is more fully described as Lot 2, Block A/7751, and is

zoned MU-3, which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for a medical clinic or ambulatory surgical center use and provide 150 of the 166 required off-street parking spaces, which will require a 16 space special exception to the off-street parking regulations.

LOCATION: 12230 Coit Road

APPLICANT: David Nevarez
Represented by DeShazo Group, Inc.

REQUEST:

A request for a special exception to the off-street parking regulations of 16 spaces is made to eliminate some of the existing compact off-street parking spaces and meet ADA standards for the existing approximately 33,200 square foot, two-story structure on the subject site with medical clinic or ambulatory surgical center use, and provide 150 (or 90 percent) of the 166 required off-street parking spaces.

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

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 16 spaces shall automatically and immediately terminate if and when the medical clinic or ambulatory surgical center use is changed or discontinued.

Rationale:

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

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed use)
North: MU-3 (Mixed use)
South: MU-3 (Mixed use)
East: MU-3 (Mixed use)
West: MU-3 (Mixed use)

Land Use:

The subject site is developed with an existing two-story structure that has approximately 33,200 square feet of floor area of medical clinic use. The areas to the north, south, and west are developed with commercial/retail uses; and the area to the east is North Central Expressway.

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 for a special exception to the off-street parking regulations of 16 spaces focuses on eliminating some of the existing compact off-street parking spaces and meeting ADA standards for the existing approximately 33,200 square foot two-story structure on the subject site with medical clinic or ambulatory surgical center use, and providing 150 (or 90 percent) of the 166 required off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirement:
 - Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area.
- The applicant has stated among other things that the property is currently operating a two-story (33,196 square foot) medical clinic or ambulatory surgical center use, that no changes are proposed to the land use or tenants in connection with this request, that the site is exceeding the number of compact parking spaces and deficient of one van-accessible space, and that on-site parking accumulation counts show a maximum parking demand of 94 vehicles. (The applicant proposes to provide 150 spaces).
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the “medical clinic or ambulatory surgical center” use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 16 spaces (or a 10 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 16 spaces shall automatically and immediately terminate if and when the medical clinic use is changed or discontinued, the applicant would be allowed to eliminate some of the existing compact off-street parking spaces and meet ADA standards for the existing approximately 33,200 square foot two-story structure on the subject site with medical clinic or ambulatory surgical center use, and provide 150 (or 90 percent) of the 166 required off-street parking spaces.

Timeline:

August 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.

September 13, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 13, 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 September 28th deadline to submit additional evidence for staff to factor into their analysis; and the October 7th 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 22, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 4, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, 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.

October 6, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objection”.

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2016

APPEARING IN FAVOR: David Nevarez, 400 S. Houston, Dallas, TX
Gary Horn, 3424 Granada, Dallas, TX

APPEARING IN OPPOSITION: Gail Wyatt, 12222 Coit Rd., Ste 102, Dallas, TX

MOTION: Gibson

I move that the Board of Adjustment, in request No. **BDA 156-102**, on application of David Nevarez, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 16 spaces because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard 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 16 spaces shall automatically and immediately terminate if and when the medical clinic use is changed or discontinued.

SECONDED: Schulte

AYES: 4 – Schulte, Gibson, Nelson, Dutia

NAYS: 1 - Bartos

MOTION PASSED: 4 – 1

FILE NUMBER: BDA156-087(SL)

BUILDING OFFICIAL’S REPORT: Application of Toby Gray for special exceptions to the fence height and visual obstruction regulations at 611 Largent Avenue. This property is more fully described as Lots 1, 2, and part of Lot 9, Block C/2777, and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 611 Largent Avenue

APPLICANT: Toby Gray

October 18, 2016 Public Hearing Notes:

- The applicant submitted additional information to the Board at the hearing which included a revised site plan and a revised elevation that the applicant stated removed all items in visibility triangles.

REQUESTS:

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

1. A request for a special exception to the fence height regulations of up to 4’ is made to maintain an existing cedar board-on-board fence (ranging from 5’ 6” – 8’ in height given grade changes on the property) in the site’s Junius Street 30’ front yard setback.

2. Requests for special exceptions to the visual obstruction regulations are made to maintain the aforementioned solid cedar board-on-board fence in the two, 20' visibility triangles on the both sides of the driveway into the site from Junius 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.

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 special exceptions):

Denial

Rationale:

- Staff concurred with the Sustainable Development and Construction Department Project Engineer who recommends denial of these requests stating that the fence encroachment into the visibility triangles creates a safety hazard to pedestrian traffic, and that the applicant's convex mirrors do not provide an equivalent reliable zone of visibility as compared to if no obstruction occurred in the first place.
- The applicant had not substantiated how the location and maintenance of a 5' 6" – 8' cedar board-on-board fence in the two 20' drive approach visibility triangles into the site from Junius Street does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)
North: R-10(A) (Single family district 10,000 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: R-10(A) (Single family district 10,000 square feet)
West: PD 397 (Planned Development)

Land Use:

The subject site is developed with a single family home. The areas to the north, south, and east west are developed with single family uses; and the area to the west is developed with 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 (fence height):

- This request for a special exception to the fence height regulations of up to 4' focuses on maintaining an existing cedar board-on-board fence (ranging from 5' 6"– 8' in height given grade changes on the property) in the site's Junius Street 30' front yard setback.
- The subject site is zoned R-10(A) which requires a minimum front yard setback of 30'.
- 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 south corner of Largent Avenue and Junius Street.
- Given the single family zoning and location of the corner lot subject site, it has two 30' front yard setbacks – a front yard setback along Largent Avenue (the shorter of the two frontages of the subject site which is always a front yard in this case) and a front yard setback along Junius Street, (the longer of the two frontages which is typically considered a side yard where on this R-10(A) zoned property a 9' high fence could be erected by right). However the site has a front yard setback along Junius Street in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the southwest "front" on Junius Street.
- A scaled site plan and fence elevations have been submitted indicating a fence proposal that will reach 8' in height in the 30' Junius Street front yard setback.
- The submitted site plan represents only a fence to exceed 4' in height in the Junius Street front yard setback and not into the site's Largent Avenue front yard setback.
- The following information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 110' in length parallel to the Junius Street, and approximately 30' in length perpendicular to this street on the northeast and southwest sides of the site in this front yard setback.
 - The proposal is represented as being located mostly on the Junius Street front property line or approximately 11' from the pavement line. (Note that a small portion/length of the fence is noted to be located in the public right-of-way. While the site plan denotes "area of possible right-of-way widening (no documentation provided)", the request to the board of adjustment for the special exception to the fence height regulations will not remedy or address any portion of any item that is located in a right-of-way or easement. Any item located in a public right-of-way or easement will require a license from City Council or written approval by the agencies having interest in the easement).

- The proposal is located across from a properties developed with a nonresidential uses with no fence in the front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Junius Street (approximately 200' northeast and southwest of the subject site) and noted a no other fences that appeared to be above 4' in height in front yards.
- As of October 7th , 2016, three letters had been submitted in support of the request, and no 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 4' will not adversely affect neighboring property.
- Granting this special exception request of 4' with a condition imposed that the applicant complies with the submitted site plan and elevations would require the proposal exceeding 4' in height in the Junius Street front yard setback to be maintained in the location and of the heights and material as shown on these documents.
- Note that no part of this application to the Board will provide any relief to any item that may be located in a public right-of-way or easement.

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

- These requests for special exceptions to the visual obstruction regulations focus on maintaining an existing cedar board-on-board fence (ranging from 5' 6" – 8' in height given grade changes on the property) in the two, 20' visibility triangles on the both sides of the driveway into the site from Junius Street.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant submitted a site plan and elevations representing a solid cedar fence (ranging from 5' 6" – 8' in height given grade changes on the property) in the two, 20' visibility triangles on the both sides of the driveway into the site from Junius Street.
- The proposal is represented as being located mostly on the Junius Street front property line or approximately 11' from the pavement line. (Note that a small portion/length of the fence is noted to be located in the public right-of-way. While the site plan denotes "area of possible right-of-way widening (no documentation provided)", the request to the board of adjustment for the special exception to the visual obstruction regulations will not remedy or address any portion of any item that is located in a right-of-way or easement. (Any item located in a public right-of-way or easement will require a license from City Council or written approval by the agencies having interest in the easement).
- On September 7th, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this

be denied” with the following additional comment: “The fence encroachment into the visibility triangle creates a safety hazard to pedestrian traffic”.

- On October 6th, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” with the following additional comment: “The fence encroachment into the visibility triangle creates a safety hazard to pedestrian traffic. The applicant’s convex mirrors do not provide an equivalent reliable zone of visibility as compared to if no obstruction occurred in the first place”.
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain an existing cedar board-on-board fence (ranging from 5’ 6” – 8’ in height given grade changes on the property) in the two, 20’ visibility triangles on the both sides of the driveway into the site from Junius Street do not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the submitted site plan and elevations would require the items in the visibility triangles to be limited to and maintained in the locations, height and materials as shown on these documents.
- Note that no part of this application to the Board will provide any relief to any item that may be located in public right-of-way or easement.

Timeline:

May 10, 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 A.

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.

- September 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following additional comment: "The fence encroachment into the visibility triangle creates a safety hazard to pedestrian traffic".
- September 9, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A). Note that this information was not factored into the staff recommendation suggested to the Board in September since it was submitted after the September 6th staff review team meeting.
- September 20, 2016: The Board of Adjustment Panel A conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on October 18, 2016.
- September 22, 2016: The Board Administrator wrote the applicant a letter that provided the board's action; and the September 28th deadline to submit additional evidence for staff to factor into their analysis; and the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials. (Note that the applicant has not submitted any additional documents from what was presented before/at the September 20th public hearing).
- October 4, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, 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.
- October 6, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following additional comment: "The fence encroachment into the visibility triangle creates a safety hazard to pedestrian traffic. The applicant's convex mirrors do not provide an equivalent reliable zone of visibility as compared to if no obstruction occurred in the first place".

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2016

APPEARING IN FAVOR: Toby Gray, 611 Largent Ave, Dallas, TX
Collin O'Hara, 611 Largent Ave., Dallas, TX

APPEARING IN OPPOSITION: Donna Lake, 6216 Junius St., Dallas, TX
Joel Bozath, 6216 Junius St., Dallas, TX

MOTION: **Agnich**

I move that the Board of Adjustment in Appeal No. **BDA 156-087**, hold this matter under advisement until **October 18, 2016**.

SECONDED: **Sibley**

AYES: 4 – Gibson, Nelson, Agnich, Sibley

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2016

APPEARING IN FAVOR: Toby Gray, 611 Largent Ave, Dallas, TX
Chris Kurtner, 6216 Junius, Dallas, TX
Ron Adams, 6223 Worth Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Gibson**

I move that the Board of Adjustment, in Appeal No. **BDA 156-087** on application of Toby Gray, **grant** the request of this applicant to construct and/or maintain a 6-foot-6-inch high fence in the property's front yard as a special exception to the 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 and elevation dated 10-18-2016 is required.

SECONDED: **Dutia**

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: **Gibson**

I move that the Board of Adjustment, in Appeal No. **BDA 156-087**, on application of Toby Gray, **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 constitute a traffic hazard.

SECONDED: Nelson

AYES: 4 – Gibson, Nelson, Dutia, Bartos

NAYS: 1 – Schulte

MOTION PASSED: 4 – 1

FILE NUMBER: BDA156-093(SL)

BUILDING OFFICIAL’S REPORT: Application of Karen Leger for special exception to the fence height and visual obstruction regulations at 10715 Wyatt Street. This property is more fully described as Lot 17, Block 8/5364, 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 approaches and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct and maintain a 9 foot high fence, which will require a 5 foot special exception to the fence height regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 10715 Wyatt Street

APPLICANT: Karen Leger

ORIGINAL REQUESTS (September 2016):

The following requests had been made on a site that is developed with a single family structure:

1. A request for a special exception to the fence height regulations of 5’ was originally made to replace an existing 6’ high open wrought iron picket fence with a solid cedar fence (ranging from 5’ 8” – 5’ 9” in height) to be located atop a proposed concrete retaining wall (ranging from 2’ 2” – 3’ 4” in height) in the site’s Maplegrove Lane 30’ required front yard.
2. Requests for special exceptions to the visual obstruction regulations were originally made to replace and maintain the aforementioned open wrought iron picket fence with a solid cedar fence in: 1) the 20’ visibility triangle on the south side of the driveway into the site from Maplegrove Lane, and 2) the 45’ visibility triangle at the intersection of Maplegrove Lane and Wyatt Street.

REVISED REQUESTS (October 2016):

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

1. A request for a special exception to the fence height regulations of 3’ 10” is made to replace an existing 6’ high open wrought iron picket fence with a solid cedar fence (ranging from 4’ 6” – 5’ 9” in height) to be located atop a proposed concrete retaining wall (ranging from 2’ 2” – 3’ 4” in height) in the site’s Maplegrove Lane 30’ required front yard.

2. A request for a special exception to the visual obstruction regulations is made to replace and maintain the aforementioned open wrought iron picket fence with a solid cedar fence in the 45' visibility triangle at the intersection of Maplegrove Lane and Wyatt Street. (The applicant's submitted revised site plan/elevation of October 6th no longer shows any item located in the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane).

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.

SEPTEMBER 20th STAFF RECOMMENDATION (visual obstruction special exceptions):

Denial of the request for a special exception to the visual obstruction regulations related to locating and maintaining a solid cedar fence in the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane

Rationale:

- Staff had concurred with the Sustainable Development and Construction Department Project Engineer who had recommended denial of this request stating that the proposed fence in this triangle would create a safety hazard to pedestrian traffic.
- The applicant had not substantiated how the location and maintenance of the proposed fence in this 20' drive approach visibility triangle does not constitute a traffic hazard.

Approval of the request for a special exception to the visual obstruction regulations related to locating and maintaining a solid cedar fence in the 45' visibility triangle at the intersection of Maplegrove Lane and Wyatt Street, subject to the following condition:

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

Rationale:

- Staff had concurred with the Sustainable Development and Construction Department Project Engineer who had no objection to that the proposed fence in this triangle.

OCTOBER 18th STAFF RECOMMENDATION (visual obstruction special exceptions):

Denial of the original request for a special exception to the visual obstruction regulations related to locating and maintaining a solid cedar fence in the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane without prejudice

Rationale:

- The applicant has submitted a revised site plan/elevation on October 6th that no longer shows any item located in the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane.

Approval of the request for a special exception to the visual obstruction regulations related to locating and maintaining a solid cedar fence in the 45' visibility triangle at the intersection of Maplegrove Lane and Wyatt Street, subject to the following condition:

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

Rationale:

- Staff concurs with the Sustainable Development and Construction Department Project Engineer who has no objection to that the proposed fence in this triangle.

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 uses.

Zoning/BDA History:

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|---|---|
| 1. Miscellaneous Item #2, BDA 156-093, Property at 10715 Wyatt Street (the subject site) | On September 20, 2016, the Board of Adjustment Panel A denied the request to reimburse the filing fee made in conjunction |
|---|---|

with this application.

GENERAL FACTS/STAFF ANALYSIS (fence height):

- The original request for a special exception to the fence height regulations of 5' focused on replacing an existing 6' high open wrought iron picket fence with a solid cedar fence (ranging from 5' 8" – 5' 9" in height) to be located atop a proposed concrete retaining wall (ranging from 2' 2" – 3' 4" in height) in the site's Maplegrove Lane 30' required front yard.
- The applicant submitted a revised site plan/elevation on October 6, 2016 (see Attachment A). The revised request for a special exception to the fence height regulations of 3' 10" focuses on replacing an existing 6' high open wrought iron picket fence with a solid cedar fence (ranging from 4' 6" – 5' 9" in height) to be located atop a proposed concrete retaining wall (ranging from 2' 2" – 3' 4" in height) in the site's Maplegrove Lane 30' required front yard.
- The subject site is zoned R-7.5(A) which requires a minimum front yard setback of 25'. The subject site has a 30' platted building line on both Maplegrove Lane and Wyatt 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 located at the northeast corner of Maplegrove Avenue and Wyatt Street.
- Given the single family zoning and location of the corner lot subject site, it has two required front yards. The site has a 30' required front yard along Maplegrove Lane (the shorter of the two frontages of the subject site which is always a front yard), and a 30' required front yard along Wyatt Street, (the longer of the two frontages which is typically considered a side yard where on this R-7.5(A) zoned property a 9' high fence could be erected by right). However the site has a required front yard along Wyatt Street in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the east "front" on Wyatt Street.
- A scaled site plan/fence elevation had been submitted indicating a fence proposal that will reach 9' in height in the 30' Maplegrove Lane required front yard.
- A revised scaled site plan/fence elevation has been submitted indicating a fence proposal that will reach 7' 10" in height in the 30' Maplegrove Lane required front yard.
- The applicant has stated that the proposed solid cedar fence would be in approximately the same location as the existing open wrought iron picket fence on the property.
- The following information was gleaned from the originally submitted site plan/elevation:
 - The proposal was represented as being approximately 56' in length parallel to the Maplegrove Lane, and 30' in length perpendicular to this street on the north and south sides of the site in this required front yard.
 - The proposal was represented as being located approximately on the Maplegrove Lane front property line or 12' from this pavement line.

- The proposal is located across from a lot developed with a single family home that fronts south to Wyatt Street with no fence in the front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Maplewood Lane (approximately 200' north and south of the subject site) and noted a no other fences that appeared to be above 4' in height in front yards.
- As of September 9, 2016, a petition with 14 signatures and two letters has been submitted in support of the request, and no letters have been submitted in opposition.
- As of October 7, 2016, a petition with 14 signatures and two letters has been submitted in support of the request, and 10 letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' 10" will not adversely affect neighboring property.
- Granting this special exception request of 3' 10" 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 Maplegrove Lane required front yard to be constructed and maintained in the location and of the heights and material as shown on this document.

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

- The original requests for special exceptions to the visual obstruction regulations focused on replacing an existing 6' high open wrought iron picket fence with a solid cedar fence (ranging from 5' 8" – 5' 9" in height) to be located atop a proposed concrete retaining wall (ranging from 2' 2" – 3' 4" in height) in: 1) the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane, and 2) the 45' visibility triangle at the intersection of Maplegrove Lane and Wyatt Street.
- The applicant submitted a revised site plan/elevation on October 6, 2016 (see Attachment A). The revised site plan/elevation on October 6th no longer shows any item located in the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45 foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant had originally submitted a site plan/elevation representing a solid cedar fence (ranging from 5' 8" – 5' 9" in height) to be located atop a proposed concrete retaining wall (ranging from 2' 2" – 3' 4" in height) in: 1) the 20' visibility triangle on the south side of the driveway into the site from Maplegrove Lane, and 2) the 45' visibility triangle at the intersection of Maplegrove Lane and Wyatt Street.
- The applicant had stated that the proposed solid cedar fence would be in approximately the same location as the existing open wrought iron picket fence on the property.

- The Sustainable Development and Construction Department Project Engineer had submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following additional comment: “There are no objections to the proposed fence encroachment into the intersection visibility triangle. Engineering recommends denial of the proposed fence into the driveway visibility triangle as this would create a safety hazard to pedestrian traffic”.
- The applicant has the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations to locate and maintain a solid cedar fence (ranging from 4’ 6” – 5’ 9” in height) to be located atop a proposed concrete retaining wall (ranging from 2’ 2” – 3’ 4” in height) in the 45’ visibility triangle at the intersection of Maplegrove Lane and Wyatt Street does not constitute a traffic hazard.
- The Board should make a separate determination of the requests for special exceptions to the visual obstruction regulation in this application. While the applicant’s submitted revised site plan/elevation no longer shows any item located in the drive approach visibility triangle, the application still technically includes two requests to the visual obstruction regulations since the board’s rules preclude the applicant to request withdrawal of the drive approach visibility triangle that is no longer needed. Granting the request for the special exception for the fence in the Maplegrove Lane/Wyatt Street intersection visibility triangle with the condition that the applicant complies with the submitted revised site plan/elevation would require the item in this visibility triangle to be limited to and maintained to the locations, height and materials as shown on this document.

Timeline:

- June 24, 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 A.
- 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.

September 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following additional comment: "There are no objections to the proposed fence encroachment into the intersection visibility triangle. Engineering recommends denial of the proposed fence into the driveway visibility triangle as this would create a safety hazard to pedestrian traffic".

September 20, 2016: The Board of Adjustment Panel A conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on October 18, 2016.

September 22, 2016: The Board Administrator wrote the applicant a letter that provided the board's action; and the September 28th deadline to submit additional evidence for staff to factor into their analysis; and the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials.

October 4, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, 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.

October 6, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application and at the September 20th public hearing (see Attachment A).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2016

APPEARING IN FAVOR: Karen Leger, 10715 Wyatt St, Dallas, TX
Justin Leger, 10715 Wyatt St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Sibley

I move that the Board of Adjustment in Appeal No. **BDA 156-093**, hold this matter under advisement until **October 18, 2016**.

SECONDED: Gibson

AYES: 4 –Gibson, Nelson, Agnich, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2016

APPEARING IN FAVOR: Justin Leger, 10715 Wyatt St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Nelson

I move that the Board of Adjustment, in Appeal No. **BDA 156-093** on application of Karen Leger, **grant** the request of this applicant to construct and maintain a 7-foot 10-inch-high fence in the property's front yard as a special exception to the 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 is required.

SECONDED: Gibson

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Dutia

I move that the Board of Adjustment, in Appeal No. **BDA 156-093**, on application of Karen Leger, **grant** the request of this applicant to locate and maintain items in the 45 foot intersection visibility triangle as a special exception to the visual obstruction regulation 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/elevation is required.

SECONDED: Bartos

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #3: Schulte

I move that the Board of Adjustment, in Appeal No. **BDA 156-093**, on application of Karen Leger, **deny** the request of this applicant to locate and maintain items in the 20 foot drive approach on the south side of the driveway **without prejudice** because our evaluation of the property and the testimony shows that this special exception will constitute a traffic hazard.

SECONDED: Bartos

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-091(SL)

BUILDING OFFICIAL’S REPORT: Application of Thomas Barnhart for a variance to the off-street parking regulations at 5017 W. Lovers Lane. This property is more fully described as Lot 34, Block A/5006, and is zoned CR, which requires that the owner of off-street parking must provide screening to separate the parking area from a contiguous residential use or vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use. The applicant proposes to construct and/or maintain a structure and not provide the required screening, which will require a variance to the off-street parking regulations.

LOCATION: 5017 W. Lovers Lane

APPLICANT: Thomas Barnhart

REQUEST:

A variance to the off-street parking regulations, more specifically the screening provisions for off-street parking, is made to lease and maintain a general merchandise or food store less than 3,500 square foot use on the subject site that is developed with a vacant nonresidential structure, and with no screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-

street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not substantiated how the physical features of the flat, rectangular in shape (59'x 25'), 0.8 acres (or approximately 3,500 square feet) site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
- Staff concluded that any hardship in this case is self-created in that the required screening that the applicant seeks variance for is prompted by the applicant's proposal/choice to obtain a certificate of occupancy (CO) for a new general merchandise or food store less than 3,500 square foot use that requires a greater number of off-street parking spaces than the original use, and that the City could issue a new CO to the applicant for the same use that had occupied the site with no screening required or variance to the off-street parking regulations related to screening required.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community retail)
North: R-7.5(A) (Single family residential 7,500-square feet)
South: PD 771 & MC-1 (Planned Development and Multiple commercial)
East: CR (Community retail)
West: CR (Community retail)

Land Use:

The subject site is developed with a vacant nonresidential structure. The area to the north is developed with a single family residential; the areas to the east and west are developed with retail uses; and the area to the south appears to be developed with office 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 (screening of off-street parking variance):

- This request for a variance to the off-street parking regulations focuses on leasing and maintaining a general merchandise or food store less than 3,500 square foot use on the subject site that is developed with a vacant nonresidential structure, and with no screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- The Dallas Development Code states the following related to the screening of off-street parking:
 - (1) The owner of off-street parking must provide screening to separate the parking area from:
 - (A) a contiguous residential use or vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use; or
 - (B) a contiguous single family or duplex use or a vacant lot if any of these are in an R, R(A), D, D(A), TH, TH(A), or CH district and the parking area serves a multifamily use.
 - (2) If an alley separates a parking area from another use, the use is considered contiguous to the parking area. If a street separates a parking area from another use, the use is not considered contiguous to the parking area.
- The Dallas Development Code states that the screening for off-street parking required under Subsection (f)(1) must be a brick, stone, or concrete masonry, stucco, concrete, or wood wall or fence that is not less than six feet in height. The wall or fence may not have more than ten square inches of open area for each square foot of surface area, and may not contain any openings or gates for vehicular access. The owner of off-street parking must maintain the screening in compliance with these standards.
- The applicant submitted a site plan that indicates no screening to be provided between the off-street parking on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- Building Inspection has stated that the required screening that the applicant seeks variance for is prompted by the applicant's proposal/choice to obtain a certificate of occupancy (CO) for a new use that requires a greater number of off-street parking spaces than the original use, and that the City could issue a new CO to the applicant for the same use that had occupied the site with no screening required or variance to the off-street parking regulations related to screening required.
- According to DCAD records, the "improvements" for property addressed at 5017 W. Lovers Lane is a 1,500 square foot "free standing retail store" constructed in 1946.
- The subject site is flat, rectangular in shape (59'x 25'), and according to the application, 0.8 acres (or approximately 3,500 square feet) in area.
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the off-street parking 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 CR 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 CR zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the applicant would be able to lease the vacant nonresidential structure on the site as a general merchandise or food store less than 3,500 square foot use with no screening between the required off-street parking for this proposed use on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.

Timeline:

- July 12, 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 A.
- 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 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.

September 20, 2016: While this application was listed on the Board of Adjustment Panel A docket, no public hearing occurred on this application because a quorum of members was lost as a result of having only three members present. No formal motion made on this application, and the hearing/action on it was postponed until October 18, 2016.

September 22, 2016: The Board Administrator wrote the applicant a letter that provided the October 18th public hearing date; and the September 28th deadline to submit additional evidence for staff to factor into their analysis, and the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials.

September 27, 2016: A person on behalf of the applicant submitted additional information to staff beyond what was submitted with the original application and at the September 6th staff review team meeting (see Attachment A).

October 4, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, 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 20, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

*Member Sibley was excused and left the meeting for the day. The quorum of members was lost as a result of having only three members present. No formal motion made on this application, and the hearing/action on it was postponed until **October 18, 2016**.

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2016

APPEARING IN FAVOR: Tom Barnhart, 4515 Gloster Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Nelson

I move that the Board of Adjustment, in request No. **BDA 156-091**, on application of Thomas Barnhart, **grant** a variance to the screening regulations for off-street parking 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Gibson

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-101(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the landscape regulations at 8989 Gaston Parkway (aka: 8989 Garland Road). This property is more fully described as Lot 1, Block 9/4413, 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: 8989 Gaston Parkway (aka: 8989 Garland Road)

APPLICANT: Robert Baldwin of Baldwin and Associates

October 18, 2016 Public Hearing Notes:

- The applicant submitted additional information to the Board at the hearing which included a revised alternate landscape plan that the City of Dallas Chief Arborist stated that he supported.

REQUEST:

A special exception to the landscape regulations is made to construct and maintain additions/second story to an existing vacant one-story nonresidential structure/office use, and not fully meet the landscape regulations, more specifically, to not provide the

required perimeter landscape buffer, plant groups, street trees, site trees, parking lot trees, and design standards on the property.

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.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concurs with the Chief Arborist and recommends denial of the request. The applicant had not substantiated how strict compliance with the requirements of the landscape regulations would unreasonably burden the use of the property; and how the special exception would not adversely affect neighboring property.
- Among other things, the applicant had not substantiated how the balance of the landscape reduction could not be reasonably compensated with an improved street frontage landscape area in an available open space which would be accounted for in Article X requirements, which would provide a positive affect to neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community retail)
North: MF-2 (Multifamily)
South: CR (Community retail)
East: CR (Community retail)
West: MF-1(Multifamily)

Land Use:

The subject site is developed with a vacant nonresidential office structure. The areas to the north and west are developed with multifamily uses; and the areas to the east and south are developed with 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:

- This request for a special exception to the landscape regulations focuses on constructing and maintaining additions/second story to an existing vacant one-story nonresidential structure/office use, and not fully meeting the landscape regulations, more specifically, not providing the perimeter landscape buffer, plant groups, street trees, site trees, parking lot trees, and design standard requirements.
- 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 building story height to an existing structure.
- The Chief Arborist's memo stated that the proposed alternate landscape plan is deficient in the following:
 1. Perimeter landscape buffer (rear yard) and plant groups (10.125(b)(1) and (b)(7)) – plan does not fully comply with required dimensions and plant group materials. No plant groups provided (utility conflict); min. of 5 required.
 2. Street trees (10.125(b)(4)) – no street trees are provided, min. of 2 required.
 3. Site trees (10.125(b)(3)) – 2 site trees are provided; min. of 4 required.
 4. Parking lot trees (10.125(b)(5)) – no parking lot trees are provided.
 5. Design Standard: Foundation planting strip (10.126(g)) – plant materials only.
- The Chief Arborist's memo listed the following factors for consideration:
 1. Landscaping is made mandatory by the addition of a story to the existing structure. The rear parking area is currently fully paved. Front parking spaces are also existing.
 2. A confirmed 15' utility easement, measured from the property line, is along the southwestern and northwestern boundaries of the property. City engineering has determined that no large or small trees, or large shrubs, should be planted within the easement. The applicant had originally proposed trees for the perimeter but staff was not supportive of the materials. The revisions identify materials which staff has found acceptable for planting within the easement.
 3. The plan identifies two design standards, including enhanced pedestrian pavement and foundation planting strip. The planting strip is four feet wide and

is designated for a mix of ornamental and drought tolerant plant materials to fill the bed which would also provide visual enhancement on the south and west side of the building.

4. The applicant has stated the new use will require 17 parking spaces. Five parking spaces are provided adjacent to Gaston Parkway where they would maneuver into the right-of-way. In further review with staff, it was concluded that, under Sec. 51A-4.300(a)(7), 'head-in parking adjacent to a public street' is excluded in determining off-street parking requirements. As this area is not accountable for required parking, we view this as providing for the potential of an additional landscape area space for a large street tree which is not encumbered by building location or utility conflicts.
 5. The provided revised alternate landscape plan provides sufficient material for the perimeter buffer area with residential adjacency, but I believe the inclusion of one additional large street tree with the conversion of one full parking space along the street frontage would better compensate for the overall reduction of landscaping in relation to the neighboring properties. This would also provide the property one additional site tree and one street tree closer to the minimum requirements. It could provide the parking lot tree compliance for three of the twelve rear parking spaces.
- The City of Dallas Chief Arborist recommends denial of the revised alternate landscape plan. Although it is shown full compliance with the regulations would place an unreasonable burden on the use of the property, and the applicant has demonstrated a reasonable effort of addressing the utility conflict in the perimeter buffer, the Chief Arborist believes the balance of the landscape reduction can be reasonably compensated with an improved street frontage landscape area in an available open space which would be accounted for in Article X requirements, and which would provide a positive affect to neighboring 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 perimeter landscape buffer, plant groups, street trees, site trees, parking lot trees, and design standard requirements on the subject site.

Timeline:

August 19, 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.

September 13, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 13, 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 September 28th deadline to submit additional evidence for staff to factor into their analysis; and the October 7th 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.”

October 4, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 4, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, 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.

October 7, 2016: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2016

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

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move that the Board of Adjustment, in Appeal No. **BDA 156-101**, on application of Robert Baldwin, **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 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 landscape plan dated 10-18-2016 is required.

SECONDED: Bartos

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Bartos

I move to adjourn this meeting.

SECONDED: Gibson

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Bartos

NAYS: 0 -

MOTION PASSED: 3 – 0

2:25 P. M.: Board Meeting adjourned for **October 18, 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.