

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL COUNCIL CHAMBERS
WEDNESDAY, November 14, 2018**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Chair, Ruth Torres, regular member, Terrance Perkins, regular member, Philip Sahuc, alternate member

MEMBERS ABSENT FROM BRIEFING: Marla Beikman, regular member

MEMBERS PRESENT AT HEARING: Scott Hounsel, Chair, Ruth Torres, regular member, Terrance Perkins, regular member, Philip Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: Marla Beikman, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, Elaine Hill, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, Elaine Hill, Board Secretary

11:11 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 14, 2018 docket.**

BOARD OF ADJUSTMENT ACTION November 14, 2018

1:03 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B October 17, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: November 14, 2018

MOTION: None

The minutes were approved.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA167-119(SL)

REQUEST: To waive the two-year limitation on a final decision reached by Board of Adjustment Panel B on November 15, 2017 - a request for a variance to the front yard setback regulations that was granted subject to compliance with the submitted site plan.

LOCATION: 810 N. Clinton Avenue

APPLICANT: Pedro Tucker

STANDARD FOR WAIVING THE TWO-YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:

The Dallas Development Code states that the board may waive the two-year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS/TIMELINE:

November 15, 2017: The Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 17' 2" imposing the submitted site plan as a condition to this request.

The case report stated that the request was made to made to construct and maintain a porch addition structure to a 1920's single family home/nonconforming structure, to be located 7' 10" from the site's front property line or 17' 2" into the 25' front yard setback. (See Attachment A for information related to this application).

October 22, 2018: The applicant submitted a letter to staff requesting that the Board waive the two-year limitation on the request for a variance to the front yard setback regulations of 17' 2" granted by Board of Adjustment Panel B in November of 2017 (see Attachment B). This miscellaneous item request to waive the two-year limitation was

made in order for the applicant to file a new application for a front yard variance on the property.

Note that The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
- If the board renders a final decision of denial without prejudice, the two-year limitation is waived.
- The applicant may apply for a waiver of the two-year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two-year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.

October 22, 2018: The Board Administrator emailed the applicant information regarding his miscellaneous item request (see Attachment C).

BOARD OF ADJUSTMENT ACTION NOVEMBER 14, 2018

APPEARING IN FAVOR: Pedro Tucker, 10437 Robindale Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move that the Board of Adjustment grant the request to waive the two-year limitation on a final decision reached by Board of Adjustment Panel B on November 15, 2017 - a request for a variance to the front yard setback regulations that was granted subject to compliance with the submitted site plan.

SECONDED: **Sahuc**

AYES: 4 – Hounsel, Perkins, Torres, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA178-107(OA)

BUILDING OFFICIAL’S REPORT: Application of Jonathan G. Vinson of Jackson Walker, LLP, for a variance to the front yard setback regulations at 4747 Roxbury Drive. This property is more fully described as 125X301 end of Roxbury Lane, Block 5533,

and is zoned R-1ac (A), which requires a front yard setback of 40 feet. The applicant proposes to construct and/or maintain a structure and provide a 30 foot front yard setback, which will require a 10 foot variance to the front yard setback regulations.

LOCATION: 4747 Roxbury Drive

APPLICANT: Jonathan G. Vinson of Jackson Walker, LLP

REQUEST:

A request for a variance to the front yard setback regulations of 10' is made to construct and maintain a two story single-family home structure with a total "home size" of approximately 6,900 square feet, part of which is to be located 30' from the front property line or 10' into this 40' front yard setback on a site that is developed with a single family home that the applicant intends to demolish.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d) (10) of 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, lot coverage, floor area for structures accessory to single-family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the variance should be granted because of the restrictive area of the subject site. The site has approximately 6,000 square feet less area than what is typically found in the R-1ac(A) zoning district. Furthermore, the applicant had substantiated how this feature precludes the lot from being developed in a manner commensurate with the development upon other parcels of land with the same R-1 ac(A) zoning by providing a list of 50 other properties in the zoning district where the average "home" is approximately 8,500 square feet – larger than that was is proposed on the site at approximately 6,900 square feet.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

There have 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:

- The request for variance to the front yard setback regulations of 10' focuses on constructing and maintaining a two story single-family home structure with a total "home size" of approximately 6,900 square feet, part of which is to be located 30' from the front property line or 10' into this 40' front yard setback on a site that is developed with a single family home that the applicant intends to demolish.
- The subject site is zoned R-1ac(A) which requires a 40' front yard setback.
- The submitted plan represents that a covered front porch and portion of the front structure are proposed to be located as close as close as 30' from the site's front property line (or 10' into the 40' front yard setback).
- The subject site is flat, unusually configured, and according to the submitted application, is 0.864 acres (or 37,636 square feet) in area. The site is zoned R-1ac (A) where lots are typically 43,560 square feet in area).
- The site plan represents that approximately 300 square feet or 4 percent of the structure is proposed to be located in the 40' Roxbury Lane front yard setback.
- DCAD records indicate the following improvements for property located at 4747 Roxbury Drive: "main improvement: a structure with 4,286 square feet of living area built in 1965", and "additional improvements; a 700 square foot detached garage, a 576 square foot storage building, and a pool".
- The applicant submitted a document indicating that the total size of the proposed home on the subject site is approximately 6,900 square feet which is smaller than that of 50 other homes he listed of properties in R-1ac(A) zoning. (The average square footage of 50 other properties listed in the applicant's document is approximately 8,500 square feet).
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance to front yard setback regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac (A) zoning classification.
- The variance to front yard setback regulations would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac (A) zoning classification.
- If the Board were to grant this request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document which in this case is a structure that is to be located 30' from the front property line or 10' into this 40' front yard setback.

Timeline:

- July 20, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 8, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.
- October 10, 2018: The Construction Department Board of Adjustment Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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 24, 2018: The applicant submitted additional documentation to staff beyond what was submitted with the original application (see Attachment A).
- October 29, 2018: The applicant submitted additional documentation to staff beyond what was submitted with the original application (see Attachment B).

October 30, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

November 2, 2018: The applicant submitted additional documentation to staff beyond what was submitted with the original application (see Attachment C).

BOARD OF ADJUSTMENT ACTION: November 14, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Torres**

I move that the Board of Adjustment **grant** the following application BDA 178-107 listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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: **Sahuc**

AYES: 4 - Hounsel, Torres, Perkins, Sahuc

NAYS: 0

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA178-125

BUILDING OFFICIAL’S REPORT: Application of Frank Meneghetti, represented by Kenneth Waits, for a special exception to the sign regulations at 4616 Greenville Avenue. This property is more fully described as Lot 3, Block A/5402, and is zoned MU-3, which prohibits non-monument signs within 250 feet of either private property in a non-business zoning district or a public park of more than one acre. The applicant proposes to locate and/or maintain a detached premises non-monument sign on a

nonresidential premise within 250 feet of either private property in a non-business zoning district or a public park of more than one acre, which will require a special exception to the sign regulations.

LOCATION: 4616 Greenville Avenue

APPLICANT: Frank Meneghetti
Represented by Kenneth Waits

REQUEST:

A request for a special exception to the sign regulations is made to replace and maintain a non-monument sign within the 250' distance requirement from a residential property on a site developed with a car wash use (Wave Wash Car Wash).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR A NON-MONUMENT SIGN WITHIN 250 FEET OF PRIVATE PROPERTY IN A NON-BUSINESS ZONING DISTRICT:

Section 51A-7.304(b)(3) states that the Board of Adjustment may grant a special exception to allow a non-monument sign within 250 feet of private property in a non-business zoning district 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 sign regulations to allow a non-monument sign within 250 feet of private property in a non-business zoning district 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: MU-3 (Mixed Use)
North: MU-3 (Mixed Use)
South: MU-3 (Mixed Use)
East: MF-1(A) (Multifamily)
West: MU-3 (Mixed Use)

Land Use:

The site is currently developed with a car wash use (Wave Wash Car Wash). The areas to the north and west are developed with retail uses; the area to the east is developed with multifamily use; and the area to the south is developed with office use.

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:

- The request focuses on replacing and maintaining a non-monument sign within the 250' distance requirement from a residential property on a site being developed with a car wash use (Wave Wash Car Wash).
- The Dallas Development Code states non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park of more than one acre.
- The applicant has submitted a site plan and sign elevation. The site plan notes that the sign board of the proposed replacement sign would be oriented to face north and south, and not to the non-business zoning district immediately east of the subject site.
- The subject site is 190' in depth therefore the entire site is within 250' of residential zoning to the east.
- The application states that "we are replacing an existing pole sign with a shorter and smaller sign".
- In October of 2004, the sign regulations were amended in ways that added the provision the applicant is seeking exception from – non-monument signs are not allowed within 250 of either private property in a non-business zoning district or a public park more than one acre.
- The applicant's representative has submitted a document stating among other things that the proposed sign will be 6' shorter and 25 square feet less in overall size than the existing sign, and that the proposed sign is not any taller than the structure on the site that is located between the proposed replacement sign and the multifamily use to the east.
- The applicant has the burden of proof in establishing the following:
 - That allowing a non-monument sign within 250 feet of private property in a non-business zoning district when, in the opinion of the board, the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted site plan as a condition to the request, the sign would be held to the location as shown on this plan – a site plan that notes that the sign board of the proposed replacement sign would be oriented to face north and south, and not to the non-business zoning district immediately east of the subject site.
- Staff does not feel it is necessary to additionally impose any sign elevation as a condition to this request since granting this special exception would not provide any relief to the sign regulations of the Dallas Development Code (i.e. height, effective area, or setback requirements) other than allowing a non-monument sign within 250 feet of private property in a non-business zoning district.

Timeline:

- August 30, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 9, 2018: The Sustainable Development and Construction Interim Assistant Director randomly assigned this case to Board of Adjustment Panel B.
- October 9, 2018: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the October 30th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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 12, 2018: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- October 30, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: November 14, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Torres

I move that the Board of Adjustment **grant** the following application BDA 178-125 listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas

Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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: Sahuc

AYES: 4 - Hounsel, Torres, Perkins, Sahuc

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA178-127(OA)

BUILDING OFFICIAL’S REPORT: Application of Kelly Saxton, represented by Jason Osterberger Designs, for a special exception to the fence standards regulations at 10747 Lennox Lane. This property is more fully described as Lot 3B, Block B/5534, and is zoned R-1(AC), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 6-foot high fence in a required front yard, which will require a 2-foot special exception to the fence standards regulations.

LOCATION: 10747 Lennox Lane

APPLICANT: Kelly Saxton
Represented by Jason Osterberger Designs

REQUESTS:

Requests for special exceptions to the fence standards regulations related to fence height of 2’ are made to construct and maintain 6’ high cast stone fences higher than 4’ in height in the site’s Lennox Lane and Catina Lane front yard setbacks on a site being developed with a single-family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards 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 standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA112-039, Property located at 10757 Lennox Lane (the lot directly to the north of the site) On May 14, 2012, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 3' and imposed the submitted site plan and elevation as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a solid stucco wall ranging in height from 6' 4" – 6' 8" (given grade changes on the property) with 7' high stucco columns in the site's Royal Lane 40' front yard setback on a site that is developed with a single-family home.
2. BDA112-039, Property located at 10757 Lennox Lane (the lot directly to the north of the site) On October 19, 1998, the Board of Adjustment Panel C denied requests for special exceptions to the fence height and visual obstruction regulations without prejudice. The case report stated that the requests were made to construct and maintain an 8' high solid masonry wall in the front yard setback and in the 45' visibility triangle at Royal Lane and Lennox Lane.
3. BDA 045-172, Property at 4610 Royal Lane (two lots west of the subject site) On May 18, 2005, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 7' imposing the following condition: Compliance with the newly submitted "Preliminary Concept Plan/Site Plan and Elevation" dated May 18, 2005, is required. The case report stated that the request was made in conjunction with constructing a wall in the 40' Royal Lane front yard setback on a site developed with a single-family home.

GENERAL FACTS/STAFF ANALYSIS:

- The requests for special exceptions to the fence standards focus on constructing and maintaining 6' high cast stone fences higher than 4' in height in the site's Lennox Lane and Catina Lane front yards setbacks on a site being developed with a single-family home.
- The property is located in an R-1ac(A) zoning district which requires a minimum front yard setback of 40 feet.
- Given the single-family zoning and location of the corner lot subject site, it has two required front yards. The site has a 40' required front yard along Lennox Lane and along Catina Lane.
- Section 51A-4.602(a) (2) of 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 submitted site plan and elevation denotes a 6' high cast stone fence with pedestrian gate in the Lennox Lane front yard setback, and a 6' high cast stone fence in the Catina Lane front yard setback.
- The following additional information was gleaned from the submitted site plan:
 - Along Lennox Lane: the proposal is represented as being approximately 130' in length parallel to the street and approximately 14' perpendicular to the street on the north and south side of the site on this required front yard; located approximately 26' from the front property line or approximately 46' from the pavement line.
 - Along Catina Lane: the proposal is represented as being approximately 56' in length parallel to the street and approximately 6' perpendicular to the street on the east and west side of the site on this required front yard; located approximately 35 from the front property line or approximately 47' from the pavement line.
- The Sustainable Development and Construction Department Board of Adjustment Senior Planner conducted a field visit of the site and surrounding area and noted several other fences that appeared to be above 4' in height along Lennox Lane located in front yard setback, some of which have recorded BDA history (see the Zoning/BDA History section of this case report for details).
- As of November 2, 2018, no letters have been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height of 2' on Lennox Lane and Catina Lane will not adversely affect neighboring property.
- Granting these special exceptions 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 Lennox Lane and Catina Lane front yard setbacks to be constructed/maintained in the location and heights as shown on these documents.

Timeline:

September 12, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 8, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

October 10, 2018: The Sustainable Development and Construction Department Senior Planner 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 October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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 31, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: November 14, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Torres**

I move that the Board of Adjustment **grant** the following application BDA 178-127 listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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: Sahuc

AYES: 4 - Hounsel, Torres, Perkins, Sahuc

NAYS: 0

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA178-124(OA)

BUILDING OFFICIAL’S REPORT: Application of Bart Gardner of Gardner Custom Homes, for special exceptions to the fence standards regulations at 4304 N Cresthaven Road. This property is more fully described as Pt of Lot 2, Block B/4972, and is zoned R-10 (A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and/or maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards regulations, and to construct and/or maintain a fence with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations.

LOCATION: 4304 N Cresthaven Road

APPLICANT: Bart Gardner of Gardner Custom Homes

REQUEST:

The following requests for special exceptions to the fence standards regulations have been made on a site that is being developed with a single-family home:

1. Related to fence height: a request of 4’ is made to construct and maintain a fence higher than 4’ in height in the site’s Cresthaven Road front yard setback and the site’s Bluffview Boulevard front yard setback – an 8’ high solid stucco fence.
2. Related to a fence panels with a surface area that is less than 50 percent open less than 5’ from the front lot line: a request is made to construct and maintain the aforementioned 8’ high solid stucco fence along Bluffview Boulevard located less than 5’ from this front lot line.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION (fence standards):

No staff recommendation is made on this or any request for a special exception to the fence standards 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 sq. ft.)
North: R-10(A) (Single-family district 10,000 sq. ft.)
South: R-10(A) (Single-family district 10,000 sq. ft.)
East: R-10(A) (Single-family district 10,000 sq. ft.)
West: R-10(A) (Single-family district 10,000 sq. ft.)

Land Use:

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

Zoning/BDA History:

There have 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 standards):

- The requests for special exceptions to the fence standards focus on:
 1. constructing and maintaining a fence higher than 4' in height in the site's front yards along Cresthaven Road and Bluffview Boulevard – an 8' high solid stucco fence.
 2. constructing and maintaining a fence with panels with surface areas less than 50 percent open along Bluffview Boulevard less than 5' from this front lot line – the aforementioned 8' high solid stucco fence.
- The subject site is zoned R-10 (A) which requires a 30' front yard setback.
- 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 Cresthaven Road and along Bluffview Boulevard.
- 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 Dallas Development Code states that no fence panel having less than 50 percent open surface area may be located less than five feet from the front lot line.
- The submitted site plan/elevation denotes an 8' high solid stucco fence in the Cresthaven Road and Bluffview Boulevard front yard setbacks.
- The following additional information was gleaned from the submitted site plan/elevation:
 - Along Cresthaven Road: the proposal is represented as being approximately 42' in length parallel to the street and approximately 9' perpendicular to the street on

- the northwest side of the site in this required front yard; located approximately 20' from the front property line or approximately 37' from the pavement line.
- Along Bluffview Boulevard: the proposal is represented as being approximately 80' in length parallel to the street and approximately 30' perpendicular to the street on the west and east side of the site in this required front yard; located approximately on the front property line or approximately 8' from the pavement line.
 - The site plan/elevation of the proposal along Bluffview Boulevard with fence panels having a surface area that is less than 50 percent open and located less than 5' from this front lot line – a 8' high stucco fence approximately 80' in length parallel to Bluffview Boulevard of the site in the front yard setbacks in length located on this front lot line.
 - The Sustainable Development and Construction Department Board of Adjustment Senior Planner conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
 - As of November 2nd, no letters had been submitted in support of the request, and two letters had been submitted in opposition.
 - The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height above 4' and to location and fence panels with surface areas that are less than 50 percent open will not adversely affect neighboring property.
 - Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 4' in height in the front yard setback and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line to be maintained in the location and of the heights and materials as shown on this document.

Timeline:

- August 16, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 8, 2018: The Board of Adjustment Secretary assigned this case to the Board of Adjustment Panel B.
- October 10, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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 30, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: November 14, 2018

APPEARING IN FAVOR: Steven Wood, 1113 E. Jefferson, Dallas, TX

APPEARING IN OPPOSITION: Leslie Davis, 4232 Bluffview Blvd., Dallas, TX
Karan Marshall, 4225 Bluffview Blvd., Dallas, TX
Pat White, 4714 Wildwood Rd., Dallas, TX
John Clarkson, 4311 Pomona Rd., Dallas, TX
Nancy Kenty, 8725 Canyon, Dr. Dallas, TX
Carl Schwalm, 4807 Bluffview Blvd., Dallas, TX

MOTION #1: Sahuc

I move that the Board of Adjustment, in Appeal No. BDA 178-124, on application of Bart Gardner of Gardner Custom Homes, **deny** the special exception requested by this applicant to construct and/or maintain an eight-foot-high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Torres

AYES: 4 - Hounsel, Torres, Perkins, Sahuc

NAYS: 0

MOTION PASSED: 4– 0 (unanimously)

MOTION #2: Sahuc

I move that the Board of Adjustment, in Appeal No. BDA 178-124, on application of Bart Gardner of Gardner Custom Homes, **deny** the special exception requested by this applicant to construct and/or maintain a fence with panels with surface areas less than 50 percent open **without** prejudice, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Torres

AYES: 4 - Hounsel, Torres, Perkins, Sahuc

NAYS: 0
MOTION PASSED: 4– 0 (unanimously)

MOTION: **Torres**

I move to adjourn this meeting.

SECONDED: **Sahuc**

AYES: 4 – Torres, Perkins, Hounsel, Sahuc

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

1:48 P.M. Board Meeting adjourned for **November 14, 2018**

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.