

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL L1FN AUDITORIUM
WEDNESDAY, NOVEMBER 15, 2017**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Marla Beikman, regular member, Matt Shouse, regular member and Philip Sahuc, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Marla Beikman, regular member, Matt Shouse, regular member and Philip Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 15, 2017 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 B October 18, 2017, public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2017

MOTION: None

The minutes were approved.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA167-111

REQUEST: To waive the two year limitation on a final decision reached by Board of Adjustment Panel B on October 18, 2017 - a request for a special exception to the landscape regulations that was granted with certain conditions.

LOCATION: 5750 E. Lovers Lane

APPLICANT: Karl A. Crawley

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:

October 18, 2017: The Board of Adjustment Panel B granted a request for special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition.

The case report stated that the request to construct and maintain an approximately 7,000 square foot addition to an existing approximately 96,000 square foot general merchandise or food store use (Central Market), and not fully meet the landscape regulations, more specifically to not provide the mandatory perimeter landscape buffer strip with buffer plant materials on southeast corner of the on the subject site). (See Attachment A for information related to this application).

October 26, 2017: The applicant submitted a letter to staff requesting that the Board waive the two year limitation on the request for a special exception

to the landscape regulations granted by Board of Adjustment Panel B in October 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 landscape special exception 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 26, 2017: The Board Administrator emailed the applicant information regarding his miscellaneous item request (see Attachment C).

BOARD OF ADJUSTMENT ACTION **OCTOBER 18, 2017**

APPEARING IN FAVOR: Karl Crawley, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move to grant 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 October 18, 2017 - a request for a special exception to the landscape regulations that was granted with certain conditions.

SECONDED: **Sahuc**

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA167-119(SL)

BUILDING OFFICIAL'S REPORT: Application of Kathryn Rodgers, represented by Pedro Tucker, for a variance to the front yard setback regulations at 810 N. Clinton Avenue. This property is more fully described as Lot C, Block 6/3460, and is zoned CD 1 (Subarea 1), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 7 foot 10 inch front yard setback measured at the foundation, with a maximum 18 inch roof eave, which will require a 17 foot 2 inch variance to the front yard setback regulations.

LOCATION: 810 N. Clinton Avenue

APPLICANT: Kathryn Rodgers
Represented by Pedro Tucker

REQUEST:

A request for a variance to the front yard setback regulations of 17' 2" is 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.

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, 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 irregular shape and restrictive area of the subject site. Furthermore, the applicant had substantiated

how these features preclude the lot from being developed in a manner commensurate with the development upon other parcels of land with the same CD 1 zoning by submitting a list of 10 other properties in the zoning district where the average total area is approximately 1,800 square feet – slightly larger than that was proposed to be on the site at approximately 1,600 square feet.

- Granting the variance would not be contrary to public interest given that the structure that the applicant seeks variance is an approximately 80 square foot porch addition structure that aligns with the existing nonconforming structure on the site built in the 1920's.

BACKGROUND INFORMATION:

Zoning:

Site: CD 1 (Subarea 1) (Conservation District)
North: CD 1 (Subarea 1) (Conservation District)
South: CD 1 (Subarea 3) (Conservation District)
East: CD 1 (Subarea 1) (Conservation District)
West: CD 1 (Subarea 1) (Conservation District)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The request for a variance to the front yard setback regulations of 17' 2" focuses on constructing and maintaining an approximately 80 square foot porch addition structure to a one-story single family home structure constructed (according to DCAD) in 1921, to be located 7' 10" from the site's front property line or 17' 2" into the 25' front yard setback.
- The subject site is zoned CD 1 (Subarea 1) which requires a minimum 25' front yard setback and minimum 5' side and rear yard setbacks for residential uses.
- The subject site is an irregular-shaped property that has a 25' front yard setback and a 5' side yard setback.
- The submitted site plan denotes the footprint of a "one story frame" and garage structures along with a representation of the footprint of the proposed porch structure that are located within the 25' front yard setback.

- According to DCAD records, the “main improvement” for property addressed at 810 N. Clinton Avenue is structure built in 1921 with 1,554 square feet of living/total area, and that “additional improvements” is a 432 square foot detached garage.
- While the existing single family home and garage structures are located in the 25’ front yard setback, it is assumed that these structures are nonconforming structures because records show that the main improvement/structures on this site were built in the 1920’s.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner’s agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The owner has informed staff that she has chosen to seek variance to the front yard setback regulations for only the proposed addition, and not to remedy/address the nonconforming aspect of the existing nonconforming structures in the front yard setback.
- All of the proposed approximately 80 square foot porch addition structure would be located in the 25’ front yard setback.
- The subject site is flat, irregular in shape, and according to the submitted application is 0.1768 acres (or approximately 7,400 square feet) in area. The site had been zoned R-7.5(A) before the zoning changed to CD 1 in 1988 where lots are typically 7,500 square feet in area.
- The applicant’s representative submitted a document representing that the proposed improvement will increase the total home area from approximately 1,550 square feet to approximately 1,600 square feet, and that the average total area of 10 other properties in CD 1 is 1,800 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 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 CD 1 (Subarea 1) 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 CD 1 (Subarea 1) zoning classification.
- If the Board were to grant the 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 porch addition structure to be located 7’ 10” from the front property line or 17’ 2” into the 25’ front yard setback.

- Note that the applicant is aware that granting the request for a variance to the front yard setback regulations will not provide any relief to the existing nonconforming structures in this setback since the applicant did not request that the Board consider this aspect as part of this application, nor to any existing noncompliance on the property with regard to fence standard regulations.

Timeline:

August 18, 2017: 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 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

October 9, 2017: 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 October 25th deadline to submit additional evidence for staff to factor into their analysis; and the November 3rd 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, 2017: The applicant’s representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

October 31, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION NOVEMBER 15, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Shouse

I move to grant that the Board of Adjustment grant application **BDA 167-119(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 is required.

SECONDED: Beikman

AYES: 4 – Honsel, Beikman, Shouse, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA167-122(SL)

BUILDING OFFICIAL’S REPORT: Application of Maxwell Fisher for a variance to the height regulations at 4635 Park Lane. This property is more fully described as Lot 3C, Block B/5546, and is zoned R-1ac(A), which limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a structure with a building height of 39 feet 10 inches, which will require a 3 foot 10 inch variance to the maximum building height regulations.

LOCATION: 4635 Park Lane

APPLICANT: Maxwell Fisher

REQUEST:

A request for a variance to the height regulations of 3’ 10” is made to construct and maintain a “2-story residence with walk-out basement” structure which is proposed to exceed the 36’ maximum structure height at 39’ 10” in height on the subject site that is, according to the applicant, currently developed with only accessory structures.

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, 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:

- (D) 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;
- (E) 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
- (F) 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 and elevations is required.

Rationale:

- The subject site is unique and different from most lots in the R-1ac(A) zoning district in that it is sloped. The slope of the subject site is the factor that makes (according to the applicant) the proposed 34' 6" high single family home (as measured around most of the east, west, and north elevations) on the site measured from existing grade, 39' 10" in height (or 3' 10" above the 36' maximum permitted height) measured from *average* grade, and that if the property was flat, the structure would comply with the height regulations and the variance request would not be necessary.
- Furthermore, the proposed home with a floor area square footage of approximately 9,000 square feet appears to be commensurate with other developments in the same R-1ac(A) zoning district. The applicant has provided information where the average of 12 other properties in the same R-1ac(A) zoning district is approximately 12,000 square feet.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is, according to the applicant, developed only with accessory structures. (The Board Administrator was unable to access the subject site given

adjoining lots and security fences). The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The request for a variance to the maximum structure height of 3' 10" focuses on constructing and maintaining a 39' 10" high "2-story residence with walk-out basement" structure on a site that is, according to the applicant, developed only with accessory structures. (The Board Administrator was unable to access the subject site given adjoining lots and security fences).
- The maximum structure height on properties zoned R-1ac(A) is 36'.
- The Dallas Development Code provides the following definition for "height": "Height means the vertical distance measured from grade to: (A) for a structure with a gable, hip, or gambrel roof, the midpoint of the vertical dimension between the lowest eaves and the highest ridge of the structure; (B) for a structure with a dome, the midpoint of the vertical dimension of the dome; and (C) for any other structure, the highest point of the structure".
- The Dallas Development Code provides the following definition for "grade": "Grade means the average of the finished ground surface elevations measured at the highest and lowest exterior corners of a structure. For purposes of this definition, finished ground surface elevation means the ground surface elevation of a building site before any construction or ground surface elevation as altered in accordance with grading plans approved by the building official. Finished ground surface elevation does not include: (A) fill material not necessary to make the site developable; (B) berms; or (C) landscape features".
- The Dallas Development Code provides the following definition for "structure": "Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner".
- The submitted site plan denotes four points of elevations on the subject site, two points at 520'-8", and two points at 509'- 8".
- A submitted section/elevation documents that represents a structure where the "top of low grade" is 515'-2" and the "top of roof" is 557' – 0".
- The applicant has submitted a document stating among other things the actual building height is 34' 6" at the primary grade around the northern 2/3 of the proposed foundation at approximately 520 feet but that the proposed building is technically 39' 4" high based on the definition of grade and building height – the average of the lowest and highest grade is 515' 2" and the roof midpoint is 554' 6'; and that if the property was flat, the structure would comply with the 36 foot height limitation.
- The applicant has provided a table of 12 other properties in the vicinity of the site zoned R-1ac(A) representing that the average floor area of homes on these

properties is approximately 12,000 square feet, and that the floor area of the home proposed on the subject site is 9,000 square feet.

- According to DCAD records, the “main improvement” is a structure with 7,992 square feet of total area/living area, and the following “additional improvements”: a 1,012 square foot detached garage; two pools; a 1,868 square foot cabana; a 3,600 square foot cabana; a tennis court; a 2,460 square foot detached quarters; and a 462 square foot garage.
- While the Board Administrator was unable to access into the subject site given adjoining lots and security fences, it appears from the applicant’s submittals that the subject site is somewhat sloped, is irregular in shape, and according to the submitted application is 1.991 acres in area. The site is zoned R-1ac(A) where lots are typically 1 acre in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac (A) zoning classification.
- If the Board were to grant the height variance request of 3’ 10”, and impose the submitted site plan and elevations as a condition, the building footprint and height of the structure on the site would be limited to what is shown on these documents.

Timeline:

August 24, 2017: 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 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

October 9, 2017: 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 October 25th deadline to submit additional evidence for staff to factor into their analysis; and the November 3rd 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 18 - 25, 2017:

The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B, C, and D).

October 31, 2017:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department 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 15, 2017

APPEARING IN FAVOR: Dallas Cothrum, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Mike Northrup, 901 Main Street, Ste. 3900, Dallas, TX

MOTION: Beikman

I move that the Board of Adjustment in Appeal No. **BDA 167-122(SL)** hold this matter under advisement until **January 17, 2018**.

SECONDED: Shouse

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA167-127(SL)

BUILDING OFFICIAL’S REPORT: Application of Rees Bowen for a special exception to the off-street parking regulations at 1512 Elm Street. This property is more fully described as Tract 4, Block 121/76, and is zoned PD 619, which requires off-street parking to be provided. The applicant proposes to construct and maintain a residential structure for a multifamily use and provide 0 of the required 1 parking spaces, which will require a 1 space special exception to the of-street parking regulations.

LOCATION: 1512 Elm Street

APPLICANT: Rees Bowen

REQUEST:

A request for a special exception to the off-street parking regulations of 1 space is made to add and maintain an approximately 1,700 square foot addition to an existing office/retail structure (level 4 to this 3-story structure) being transitioned to multifamily use, and provide 0 of the 1 off-street parking spaces required by this addition.

(Note that the application made on this property is two lots west of a property where the same applicant seeks a similar special exception to the off-street parking regulations from the Board of Adjustment Panel B on November 15th: BDA167-128).

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 1 space shall automatically and immediately terminate if and when the multifamily use is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Assistant Director of Engineering indicated that he has no objections to the applicant’s request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 619 (Planned Development)
North: PD 619 (Planned Development)
South: PD 619 (Planned Development)
East: PD 619 (Planned Development)
West: PD 619 (Planned Development)

Land Use:

The subject site is developed with an office/retail structure being transitioned to multifamily use. The areas to the north, south, east and west are developed with a mix of office, retail, residential, and parking garage uses.

Zoning/BDA History:

1. BDA167-128, Property located at 1516 Elm Street (the property two lots east of the subject site) On November 15, 2017, the Board of Adjustment Panel B will consider a request for a special exception to the off-street parking regulations of 1 space is made to add and maintain an approximately 1,500 square foot addition to an existing office/retail structure (level 6 to this 5-story structure) being transitioned to general merchandise or food store, alcoholic beverage establishment, and multifamily uses, and provide 0 of the 1 off-street parking spaces required by this addition.

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the off-street parking regulations of 1 space focuses on adding and maintaining an approximately 1,700 square foot addition to an existing office/retail structure (level 4 to this 3-story structure) being transitioned to multifamily use, and providing 0 of the 1 off-street parking spaces required by this addition.
- The subject site is zoned PD 619 which states that the off-street parking regulations contained in Section 51A for the CA-1(A) Central Area District apply in this district.
- The “Special off-street parking provisions” in CA-1(A) zoning states that “except as provided in this section, for all uses except single family and duplex, off-street parking is only required for a building built after June 26, 1967, or an addition to an existing building at a ratio of one parking space for each 2,000 square feet of floor area”.
- The applicant has submitted a site plan that represents that the square footage to be added to the existing structure on the subject site that, according to DCAD, was constructed in 1925, is approximately 1,700 square feet, and that the required 1 off-street parking space is not proposed to be provided. (Note that Building Inspection Senior Plans Examiner/Development Code Specialist has stated that an interpretation has been made that one parking space is required in this case since the proposed 1,700 square foot addition is between 0 – 2,000 square feet of floor area, hence one parking spaces is required).
- The Sustainable Development and Construction Department Assistant Director of Engineering has submitted a review comment sheet marked “Has no objections” to the applicant’s request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the “multifamily” use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 1 space would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 1 spaces shall automatically and immediately terminate if and when the multifamily use is changed or discontinued, the applicant could add and maintain the

approximately 1,700 square foot addition to an existing office/retail structure (level 4 to this 3-story structure), and provide 0 of the 1 required off-street parking spaces required by this addition.

Timeline:

September 20, 2017: 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 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

October 9, 2017: 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 October 25th deadline to submit additional evidence for staff to factor into their analysis; and the November 3rd 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, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

- November 1, 2017: The Sustainable Development and Construction Department Assistant Director of Engineering has submitted a review comment sheet marked “Has no objections”.

BOARD OF ADJUSTMENT ACTION November 15, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Shouse**

I move to grant that the Board of Adjustment grant application **BDA 167-127(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:

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

SECONDED: Beikman

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA167-128(SL)

BUILDING OFFICIAL’S REPORT: Application of Rees Bowen for a special exception to the off-street parking regulations at 1516 Elm Street. This property is more fully described as Tract 2, Block 121/76, and is zoned PD 619, which requires parking to be provided. The applicant proposes to construct and maintain a structure for a general merchandise or food store 3500 square feet or less use, an alcoholic beverage establishment use, and a multifamily use, and provide 0 of the required 1 parking spaces, which will require a 1 space special exception to the off-street parking regulations.

LOCATION: 1516 Elm Street

APPLICANT: Rees Bowen

REQUEST:

A request for a special exception to the off-street parking regulations of 1 space is made to add and maintain an approximately 1,500 square foot addition to an existing office/retail structure (level 6 to this 5-story structure) being transitioned to general merchandise or food store, alcoholic beverage establishment, and multifamily uses, and provide 0 of the 1 off-street parking spaces required by this addition.

(Note that the application made on this property is two lots east of a property where the same applicant seeks a similar special exception to the off-street parking regulations from the Board of Adjustment Panel B on November 15th: BDA167-127).

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 1 space shall automatically and immediately terminate if and when the general merchandise or food store, alcoholic beverage establishment, and multifamily use are changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Assistant Director of Engineering indicated that he has no objections to the applicant's request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 619 (Planned Development)
North: PD 619 (Planned Development)
South: PD 619 (Planned Development)
East: PD 619 (Planned Development)
West: PD 619 (Planned Development)

Land Use:

The subject site is developed with an office/retail structure being transitioned to multifamily use. The areas to the north, south, east and west are developed with a mix of office, retail, residential, and parking garage uses.

Zoning/BDA History:

1. BDA167-127, Property located at 1516 Elm Street (the property two lots west of the subject site) On November 15, 2017, the Board of Adjustment Panel B will consider a request for a special exception to the off-street parking regulations of 1 space is made an approximately 1,700 square foot addition to an existing office/retail structure (level 4 to this 3-story structure) being transitioned to multifamily use, and provide 0 of the 1 off-street parking spaces required by this addition.

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the off-street parking regulations of 1 space focuses on adding and maintaining an approximately 1,500 square foot addition to an existing office/retail structure (level 6 to this 5-story structure) being transitioned to general merchandise or food store, alcoholic beverage establishment, and multifamily uses, and providing 0 of the 1 off-street parking spaces required by this addition.
- The subject site is zoned PD 619 which states that the off-street parking regulations contained in Section 51A for the CA-1(A) Central Area District apply in this district.
- The “Special off-street parking provisions” in CA-1(A) zoning states that “except as provided in this section, for all uses except single family and duplex, off-street parking is only required for a building built after June 26, 1967, or an addition to an existing building at a ratio of one parking space for each 2,000 square feet of floor area”.
- The applicant has submitted a site plan that represents that the square footage to be added to the existing structure on the subject site that, according to DCAD, was constructed in 1900, is approximately 1,500 square feet, and that the required 1 off-street parking space is not proposed to be provided. (Note that Building Inspection Senior Plans Examiner/Development Code Specialist has stated that an interpretation has been made that one parking space is required in this case since the proposed 1500 square foot addition is between 0 – 2,000 square feet of floor area, hence one parking spaces is required).
- The Sustainable Development and Construction Department Assistant Director of Engineering has submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the general merchandise or food store, alcoholic beverage establishment, and multifamily uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 1 space would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 1 space shall automatically and immediately terminate if and when the general merchandise or food store, alcoholic beverage establishment, and multifamily uses are changed or discontinued, the applicant could add and maintain the approximately 1,500 square foot addition to an existing office/retail structure (level 6 to this 5-story structure), and provide 0 of the 1 required off-street parking space required by this addition.

Timeline:

September 20, 2017: 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 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

October 9, 2017: 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 October 25th deadline to submit additional evidence for staff to factor into their analysis; and the November 3rd 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, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

- November 1, 2017: The Sustainable Development and Construction Department Assistant Director of Engineering has submitted a review comment sheet marked "Has no objections".

BOARD OF ADJUSTMENT ACTION NOVEMBER 15, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Shouse**

I move to grant that the Board of Adjustment grant application **BDA 167-128(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:

- The special exception of one space shall automatically and immediately terminate if and when the general merchandise or food store use, alcoholic beverage establishment use, and multifamily use are changed or discontinued.

SECONDED: Beikman

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA167-105(JM)

BUILDING OFFICIAL'S REPORT: Application of Michelle Brooks/Mark Molthan Construction, Inc., represented by Michelle Brooks, Wyatt Seals, or Paul Steinbrecher, for special exceptions to the fence standards at 9203 Sunnybrook Lane. This property is more fully described as Lots 7 & 8, Block 13-A/5586, and is zoned R-1ac(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, and to construct and/or maintain a fence in a required front yard 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.

LOCATION: 9203 Sunnybrook Lane

APPLICANT: Michelle Brooks/Mark Molthan Construction, Inc.
Represented by Michelle Brooks, Wyatt Seals, or Paul Steinbrecher

REQUEST:

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

- 1) A special exception related to fence height of 4' is made to complete and maintain a fence higher than 4' in height in the front yard setback (a 7' 6" wrought iron fence with 8' stone columns and stone wing walls); and
- 2) A special exception related to fence materials is made to complete and maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned fence type) located as close as on the front lot line (or 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:

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

Land Use:

The subject site is developed with a single family home (under construction). The areas to the north, east, and south are developed with single family uses. A creek exists to the west (floodplain).

Zoning/BDA History:

1. BDA145-008, Property at 9246 Sunnybrook Lane (northeast of the subject site)
On January 20, 2015, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4'. The case report stated that the request was made in conjunction with constructing and maintaining an 8' high limestone masonry fence towards the northwest of the property, a 6'-2" high painted steel fence between 2 evergreen hedges towards the west and south sides of the property, one 6'-2" high painted steel service gate towards the south of the property, and one 8' high painted steel vehicular gate towards the northwest of the property, parallel and perpendicular to Sunnybrook Lane.
2. BDA967-128, Property at 4936 Radbrook Place (southwest of the subject site)
On November 18, 1996, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of up to 6' and a special exception to the visibility triangle regulations. The case report stated that the request was made in conjunction with constructing and maintaining a 6' wrought iron fence with 7' gates and 10' stone columns (the latter from BDA action in 1985, but the fence was never constructed).

GENERAL FACTS/STAFF ANALYSIS:

- The requests for special exceptions to the fence standards focus on completing and maintaining: 1) a fence higher than 4' in height in the front yard setback (a 7' 6" wrought iron fence with 8' stone columns and stone wing walls); and, 2) a fence with panels with surface areas that are less than 50 percent open (the aforementioned fence type) located as close as on the front lot line (or less than 5' from this front lot line).
- The subject site is zoned R-1ac(A).
- Note the following with regard to the request for special exceptions to the fence standards pertaining to the **height** of the proposed fence in the front yard setback:
 - The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
 - The applicant has submitted a site plan and elevation of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 8'.
 - The following additional information was gleaned from the submitted site plan:
 - The proposal over 4' in height is represented as being approximately 38' 10" along the northeast property boundary (1' 2" from the property line on Sunnybrook Ln.); 240' 1" along the property line parallel to Sunnybrook Ln.; and, 297' along the south property boundary, parallel to Radbrook Pl. (8' 5" from the southwest boundary with the floodplain and on the property line at the corner of Sunnybrook Ln. and Radbrook Pl.)—all within the front yard setback.
- Note the following with regard to the request for special exception to the fence standards pertaining to the **location and materials** of the proposed fence:
 - The Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
 - With regard to the special exception to the fence standards pertaining to the location and materials of the proposed fence, the applicant has submitted a site plan and elevation of the fence with fence panels with surface areas that are less than 50 percent open (a 7' 6" wrought iron fence with 8' stone columns and stone wing walls) located as close as on the front lot line (or less than 5' from this front lot line).
- The Board Senior Planner conducted a field visit of the site and surrounding area within the same block facing Sunnybrook Ln. and Radbrook Pl. and noted **four fences** that appeared to be above 4' in height and located in a front yard setback. Two cases had BDA history as noted in the history section of this report.
- As of October 6, 2017, no letters have been submitted in support of or in opposition to the request.

- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height over 4' in the front yard setback and materials/height/location of the proposed fence will not adversely affect neighboring property. Evidence was submitted with this application and is provided in within the application materials.
- On November 3, 2017, additional evidence was submitted in support of the request ("Attachment A").
- 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 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 constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

July 18, 2017: 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 12, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 18, 2017: The Board Senior Planner emailed the applicant's representative the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the September 27th deadline to submit additional evidence for staff to factor into their analysis; and the October 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

October 3, 2017: 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 Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

October 18, 2017: The Board of Adjustment Panel B conducted a public hearing on this application. A person appeared in opposition. The Board delayed action on this application until their next public hearing to be held on November 15, 2017.

November 3, 2017: Additional evidence was submitted in support of this request ("Attachment A").

BOARD OF ADJUSTMENT ACTION OCTOBER 18, 2017

APPEARING IN FAVOR: Michelle Brooks, 7001 Preston Road, Dallas, TX

APPEARING IN OPPOSITION: Pamela Graham, 4905 Radbrook Place, Dallas, Tx

MOTION: **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 167-105**, hold this matter under advisement until **November 15, 2017**.

SECONDED: **Sahuc**

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION NOVEMBER 15, 2017

APPEARING IN FAVOR: Michelle Brooks, 7001 Preston Road, Dallas, TX
Deanna Denning, 10532 Barrywood Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 167-105(JM)**, on application of Michelle Brooks/Mark Molthan Construction, Inc., represented by Michelle Brooks, Wyatt Seals, or Paul Steinbrecher, **grant** the request of this applicant to construct and/or maintain an eight-foot high fence as a special exception to the height requirement for fences 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 site plan and elevation is required.

SECONDED: **Sahuc**

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 0
MOTION PASSED 4 – 0 (unanimously)

MOTION #2: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 167-105(JM)**, on application of Michelle Brooks/Mark Molthan Construction, Inc., represented by Michelle Brooks, Wyatt Seals, or Paul Steinbrecher, **grant** the request of this applicant to complete and maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as a special exception to the surface area openness requirement for fences 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 site plan and elevation is required.

SECONDED: Shouse
AYES: 4 – Hounsel, Beikman, Shouse, Sahuc
NAYS: 0
MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA167-117(JM)

BUILDING OFFICIAL’S REPORT: Application of Kip Petroff for special exceptions to the fence standards at 10802 Dove Brook Circle. This property is more fully described as Lot 34, Block Y/7288, and is zoned 122R-13(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, and to construct and/or maintain a fence in a required front yard 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.

LOCATION: 10802 Dove Brook Circle

APPLICANT: Kip Petroff

REQUEST:

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

- 3) A special exception related to fence height of 4’ is made to complete and maintain a fence higher than 4’ in height in the front yard setback (an 8’ solid wood fence with cap); and

- 4) A special exception related to fence materials is made to complete and maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned fence type) located as close as on the front lot line (or 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:

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-13(A) (Single family district 13,000 square-feet)
North: R-13(A) (Single family district 13,000 square-feet)
South: MF-2(A) (Multifamily district)
East: MF-2(A) (Multifamily district)
West: R-13(A) (Single family district 13,000 square-feet)

Land Use:

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

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 requests for special exceptions to the fence standards focus on completing and maintaining: 1) a fence higher than 4' in height in the front yard setback (8' solid wood fence with cap); and, 2) a fence with panels with surface areas that are less than 50 percent open (the aforementioned fence type) located as close as on the front lot line (or less than 5' from this front lot line).
- The subject site is zoned R-13(A).
- Note the following with regard to the request for special exceptions to the fence standards pertaining to the **height** of the proposed fence in the front yard setback:

- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and elevation of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal over 4' in height is represented as being approximately 15' along the north property boundary (on the property line); 130' along the property line parallel to Stone Canyon Rd.; and, 15' along the south perpendicular to Stone Canyon Rd. and up to the property line—all within the 15' front yard setback on Stone Canyon Rd.
- Note the following with regard to the request for special exception to the fence standards pertaining to the **location and materials** of the proposed fence:
 - The Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
 - With regard to the special exception to the fence standards pertaining to the location and materials of the proposed fence, the applicant has submitted a site plan and elevation of the fence with fence panels with surface areas that are less than 50 percent open (8' solid wood fence with cap) located as close as on the front lot line (or less than 5' from this front lot line).
- The Board Senior Planner conducted a field visit of the site and surrounding area within the same block facing Dove Brook Cir. and Stone Canyon Rd. and noted **no other fences** that appeared to be above 4' in height and located in a front yard setback.
- As of October 6, 2017, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height over 4' in the front yard setback and materials/height/location of the proposed fence will not adversely affect neighboring property.
- On October 23, 2017, the applicant submitted a request to “cancel” the application (“Attachment B”).
- 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 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 constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

August 22, 2017: 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 12, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 18, 2017: The Board Senior Planner emailed the applicant's representative the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the September 27th deadline to submit additional evidence for staff to factor into their analysis; and the October 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

October 3, 2017: 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 Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

October 18, 2017: The Board of Adjustment Panel B conducted a public hearing on this application. One person appeared in opposition and submitted documents ("Attachment A"). The Board delayed action on this application until their next public hearing to be held on November 15, 2017.

October 23, 2017: The applicant submitted a request to "cancel" the application ("Attachment B"). Since the case was held to the November 15th hearing date, the applicant cannot withdraw the request.

BOARD OF ADJUSTMENT ACTION OCTOBER 18, 2017

APPEARING IN FAVOR: Kip Petroff, 10802 Dove Brook Circle, Dallas, TX

APPEARING IN OPPOSITION: Ember Flack, 10831 Stone Canyon Road, Dallas, TX

MOTION #1: Shouse

I move that the Board of Adjustment, in Appeal No. **BDA 167-117**, on application of Kip Petroff, **grant** the request of this applicant to construct and/or maintain an eight-foot high fence as a special exception to the height requirement for fences 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 site plan and elevation is required.

SECONDED: Beikman

AYES: 0 -

NAYS: 4 – Hounsel, Beikman, Shouse, Sahuc

MOTION FAILED: 0-4

MOTION #2: Hounsel

I move that the Board of Adjustment in Appeal No. **BDA 167-117**, hold this matter under advisement until **November 15, 2017**.

SECONDED: Sahuc

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION NOVEMBER 15, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: Ember Flack, 10831 Stone Canyon Road, Dallas, TX

MOTION: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 167-117(JM)**, on application of Kip Petroff, **deny** the special exception requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Sahuc

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

MOTION: Hounsel

I move to adjourn this meeting.

SECONDED: Sahuc

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

1:35 P.M. Board Meeting adjourned for **November 15, 2017**

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.