

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
MONDAY, DECEMBER 14, 2015**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Peter Schulte, regular member, Marla Beikman, regular member and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Joe Carreon, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Peter Schulte, regular member, Marla Beikman, regular member and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: Joe Carreon, regular member

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

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

10:39 p.m. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **December 14, 2015** docket.

1:06 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

Approval of the Board of Adjustment Panel C November 16, 2015 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: DECEMBER 14, 2015

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA 145-121(SL)

BUILDING OFFICIAL’S REPORT: Application of Dagmawi Asseged Yemenu, represented by Robert Reeves and Associates, Inc., for a variance to the front yard setback regulations and a special exception to the fence height regulations at 7728 Goforth Circle. This property is more fully described as Lot 17A, Block B/5446, and is zoned R-7.5(A), which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a single family residential structure and provide a 10 foot front yard setback, which will require a 15 foot variance to the front yard setback regulations, and to construct and maintain a 9 foot high fence, which will require a 5 foot special exception to the fence height regulations.

LOCATION: 7728 Goforth Circle

APPLICANT: Dagmawi Asseged Yemenu
Represented by Robert Reeves and Associates, Inc.

REQUESTS:

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

1. A variance to the front yard setback regulations of 15’ is made to construct a single family home structure in one of the site’s two 25’ front yard setbacks (Goforth Road); and
2. A special exception to the fence height regulations of 5’ is made to construct and maintain a 9’ high board-on-board cedar fence in one of the site’s two 25’ front yard setbacks (Goforth Road).

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.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION (variance):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots zoned R-7.5(A) in that it is a lot with a restrictive area once two front yard setbacks, a required 20' sanitary sewer easement, and floodplain are accounted for. The atypical lot with these physical site constraints precludes the applicant from developing it in a manner commensurate with development (in this case with a two-story approximately 5,500 square foot house) found on other similarly zoned R-7.5(A) properties with the typical one front yard setback, two side yard setbacks, one rear yard setback, and with no easements or floodplain.

STAFF RECOMMENDATION (fence height special exception):

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

BACKGROUND INFORMATION:

Zoning:

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

North: R-7.5(A) (SUP 972) (Single family district 7,500 square feet)(Specific Use Permit)
South: R-7.5(A) (Single family district 7,500 square feet)
East: R-7.5(A) (Single family district 7,500 square feet)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is being developed with a single family use/structure. The areas to the north, east, and south are developed with single family uses; and the area to the west is developed with an institutional/water utilities use.

Zoning/BDA History:

1. BDA 145-092, Property located at 7743 Goforth Circle (the lot immediately northeast of subject site)

On September 23, 2015, the Board of Adjustment Panel B granted requests for a variance to the front yard setback regulations of 20' and special exceptions to the fence height regulations of 8' and to the visual obstruction regulations imposing the submitted site plan/elevation as a condition to these requests.

The case report stated that the requests were made to construct and maintain a new arbor, pool equipment, and existing air conditioning unit structures in the Goforth Road 25' front yard setback; to maintain a 6' 2" - 8' high board on board cedar fence some of which is located atop a stone retaining wall as high as 3' 10 ¼" in the site's Goforth Circle and Goforth Road front yard setbacks, and to maintain the 8' high board on board cedar fence some of which is located atop a stone retaining wall as high as 3' 10 ¼" in the 45' visibility triangle at the intersection of Goforth Circle and Goforth Road.

2. BDA 123-051, Property located at 7743 Goforth Circle (the lot immediately northeast of subject site)

On May 22, 2015, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 12' 9" imposing the submitted site plan as a condition to the request.

The case report stated that the request was made to construct and maintain a two-story single family structure, part of which was to be located in one of the three front yard setbacks (Goforth Road).

GENERAL FACTS/STAFF ANALYSIS (variance):

- This request focuses on constructing and maintaining an approximately 5,500 square foot, two-story single family home structure in the site's Goforth Road 25' front yard setback.
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The subject site is located at the south corner of Goforth Road and Goforth Circle. Regardless of how the home being constructed on the site is oriented to front northward to Goforth Circle and to side westward onto Goforth Road, the site has two, 25' front yard setbacks. The site has a 25' front yard setback along Goforth Circle, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25' front yard setback along Goforth Road, the longer of the two frontages of this corner lot, which is typically regarded as a side yard. But the site's Goforth Road frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes south of the site that front/are oriented westward towards Goforth Road.
- The submitted revised site plan indicates that the proposed single family home is located 10' from the Goforth Road front property line or 15' into this 25' front yard setback.
- No part of this application is made for any structure to encroach into the site's Goforth Circle front yard setback.
- According to DCAD records, there is "no main improvement" at 7728 Goforth Circle.
- The subject site is somewhat sloped, irregular in shape, and according to the application is 0.574 acres (or approximately 25,000 square feet) in area. The site is zoned R-7.5(A) where lots typically are 7,500 square feet in area.
- The applicant's representative states that a 20' wide sanitary easement is required on its northeast side (required by the City to be widened from 5'), and that approximately 60 percent of the site lies in the 100-year floodplain.
- The site has two, 25' front yard setbacks and two 5' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- According to the applicant's representative, approximately 13 percent of the air-conditioned space and approximately 50 percent of the garage would be located in the 25' front yard setback along Goforth Road.
- The applicant's representative submitted a document listing 13 other properties in the same R-7.5(A) zoning district as the subject site with development that is greater than the 5,500 square feet of home proposed on the subject site.
- The applicant has the burden of proof in establishing the following:
 1. 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.

2. 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-7.5(A) zoning classification.
 3. 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-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted revised 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 located 10' from the Goforth Road front property line (or 15' into this 25' front yard setback).

GENERAL FACTS/STAFF ANALYSIS (fence height special exceptions):

- This request focuses on constructing and maintaining a 9' high board-on-board cedar fence in one of the site's two 25' front yard setbacks (Goforth Road) on a site being developed with a single family home.
- The subject site is zoned R-7.5(A).
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is located at the south corner of Goforth Road and Goforth Circle. Regardless of how the home on the site is oriented to front northward to Goforth Circle and to side westward onto Goforth Road, the site has two, 25' front yard setbacks. The site has a 25' front yard setback along Goforth Circle, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25' front yard setback along Goforth Road, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 9' high fence would be allowed by right. But the site's Goforth Road frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes south of the site that front/are oriented westward towards Goforth Road.
- The applicant has submitted a revised site plan/elevation of the proposal in the Goforth Road front yard setback that reaches a maximum height of 9'
- No part of this application is made for any fence to exceed 4' in height in the site's Goforth Circle front yard setback.
- The following additional information was gleaned from the submitted revised site plan/elevation:
 - The portion of the fence that exceeds 4' in height on the subject site is in the Goforth Road front yard setback is about 250' in length parallel to this street and

about 22' in length perpendicular to this street on the north and sides of this site in this front yard setback.

- The fence over 4' in height in the front yard setback is located approximately 3' from the property line or approximately 13'- 26' from the Goforth Road pavement line.
- 18 "boxwood buxus planted in 3' planting area in front of fence" along Goforth Road.
- The Board Administrator conducted a field visit of the site and surrounding area, and noted several other fences above 4 feet high which appeared to be located in a front yard setback, 4 of which are solid fences approximately 6' – 9' high located immediately northeast of the subject site (one of which have recorded BDA history), and the other of which is a solid fence approximately 6' high located immediately northwest of the subject site with no recorded BDA history.
- No home fronts the proposed fence to be located in the subject site's Goforth Road. The property directly across from the proposed fence on the subject site is a property (City of Dallas Northeast Service Center) with an approximately 6' high solid fence in its front yard.
- As of December 4th, no letters had been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' will not adversely affect neighboring property.
- Granting this special exceptions of 5' with a condition imposed that the applicant complies with the submitted revised site plan/elevation would require the fence exceeding 4' in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on this document.

Timeline:

October 20, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 10, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 10, 2015: 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 November 25th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th 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.

November 22, 2015: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

December 1, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

December 3, 2015: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: DECEMBER 14, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move to grant that the Board of Adjustment grant application **BDA 145-121** 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:

- With regard to the 15 foot front yard setback variance, compliance with the submitted revised site plan is required.
- With regard to the 5 foot fence height special exception, compliance with the submitted revised site plan with elevation is required.

SECONDED: **Beikman**

AYES: 5 – Richardson, Coulter, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-122(SL)

BUILDING OFFICIAL'S REPORT: Application of Catherine Jennings for a special exception to the fence height regulations at 4106 Walnut Hill Lane. This property is more fully described as Lot 5, Block 2/6147, and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot 6 inch high fence, which will require a 4 foot 6 inch special exception to the fence height regulations.

LOCATION: 4106 Walnut Hill Lane

APPLICANT: Catherine Jennings

REQUEST:

A request for a special exception to the fence height regulations of 4' 6" is made to replace an approximately 5.5' – 6' high wood fence with an 8' 6" high board-on-board wood fence in the one of the site's two required front yards (Lakemont Drive) on a site that is developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)
North: PD 416 (Planned Development)
South: R-10(A) (Single family district 10,000 square feet)
East: R-10(A) (Single family district 10,000 square feet)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

The subject site is developed with a single family home. The 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:

- This request focuses on replacing an approximately 5.5' – 6' high wood fence with an 8' 6" high board-on-board fence in the one of the site's two required front yards (Lakemont Drive) on a site that is developed with a single family home.
- The subject site is zoned R-10(A).
- 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 site is located at the southeast corner of Walnut Hill Lane and Lakemont Drive. Regardless of how the home on the site is oriented to front northward to Walnut Hill Lane and to side westward onto Lakemont Drive, the site has two required front yards. The site has a 50' required front yard along Walnut Hill Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district, and a 30' required front yard along Lakemont Drive, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 9' high fence would be allowed by right. But the site's Lakemont Drive frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes south of the site that front/are oriented westward towards Lakemont Drive.
- No part of the application is made to address any fence in the site's Walnut Hill Lane required front yard.
- The applicant has submitted a site plan and a revised elevation of the proposal in the front yard setback with notations indicating that the fence reaches a maximum height of 8' 6".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 50' in length parallel to the Lakemont Drive, and approximately 30' perpendicular to Lakemont Drive on the north and south sides of the site in this front yard setback.
 - The proposal is represented as being located approximately on the Lakemont Drive front property line. (The distance between the fence and the pavement line cannot be determined from the submitted site plan given that there is no representation of the Lakemont Drive pavement).
- The proposal/existing fence is located across from one single family home, a property that has an approximately 5' – 6' high solid wood fence in its front yard setback along Lakemont Drive.

- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fence that appeared to be above 4' in height and located in a front yard setback other than the one previously mentioned directly west of the subject site.
- As of December 4th, 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 exception to the fence height regulations of 4' 6" will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the submitted site plan and revised elevation would require the proposal exceeding 4' in height in the Lakemont Drive required front yard to be replaced and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

October 23, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 10, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 10, 2015: 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 November 25th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th 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.

November 19, 2015: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

December 1, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction

Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: DECEMBER 14, 2015

APPEARING IN FAVOR: Marc Jennings, 4106 Walnut Hill LN, Dallas, Tx

APPEARING IN OPPOSITION: No one

MOTION: Coulter

I move that the Board of Adjustment, in request No. **BDA 145-122**, on application of Catherine Jennings, **grant** the request to construct and maintain an 8-foot 6-inch high fence in the property’s front yard as a special exception to the fence height requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Schulte

AYES: 5 – Richardson, Coulter, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-123(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Reeves and Associates to enlarge a nonconforming use at 13350 Dallas Parkway. This property is more fully described as a 23.64 acre tract in Block 7001 and part of Block 7002 and is zoned PD-887 (Subdistrict 7), which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming commercial amusement (inside) use, which will require a request to enlarge a nonconforming use.

LOCATION: 13350 Dallas Parkway

APPLICANT: Robert Reeves and Associates

REQUEST:

A request is made to enlarge a nonconforming “commercial amusement (inside)” use by adding an approximately 5,200 square foot “commercial amusement (inside)” use

(skating rink) adjacent to an existing approximately 8,300 square foot “commercial amusement (inside)” use (skating rink) on the subject site that is currently developed with a mixed use development (The Galleria Dallas).

STANDARD FOR ENLARGING A NONCONFORMING USE:

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STAFF RECOMMENDATION:

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

BACKGROUND INFORMATION:

Zoning:

Site: PD 887 (Subdistrict 7) (Planned Development)
North: PD 887 (Subdistrict 6) (Planned Development)
South: MU-3 (Mixed use)
East: PD 887 (Subdistrict 3) (Planned Development)
West: CR (Community retail)

Land Use:

The subject site is developed as a mixed use development (The Galleria Dallas) which includes among other uses a “commercial amusement (inside)” use or skating rink. The area to the north is developed with a mix of uses; the area to the east is developed with mostly multifamily uses; the area to the south is the LBJ Freeway; and the area to the west is the Dallas North Tollway.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on enlarging a nonconforming “commercial amusement (inside)” use by adding an approximately 5,200 square foot “commercial amusement (inside)” use (skating rink) adjacent to an existing approximately 8,300 square foot “commercial amusement (inside)” use (skating rink) on the subject site that is currently developed with a mixed use development (The Galleria Dallas).
- The subject site is zoned PD 887 (Valley View-Galleria Area Special Purpose District) (Sudistrict 7).
- A “commercial amusement (inside)” use means “a facility wholly enclosed in a building that offers entertainment or games of skill to the general public for a fee. This use includes but not is limited to an adult arcade, adult cabaret, adult theater, amusement center, billiard hall, bowling alley, children’s amusement center, dance hall, motor track, or skating rink.”
- A “commercial amusement (inside)” use is permitted in PD 887 with a SUP (Specific Use Permit).
- The commercial amusement (inside) use on the subject site does not have an SUP.
- A document has been included in the case file that states the “commercial amusement (inside)” use at 13350 Dallas Parkway is a nonconforming use.
- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The applicant has submitted a site plan that makes representation of the “existing ice rink 8,333 sq. ft.” and the “Galleria proposed ice rink expansion, ice rink expansion area/ice skating center, 5,250 SF.”
- The applicant has stated that the Dallas Galleria Mall was developed in 1982 under Chapter 51 Industrial 1 and Light Commercial District zoning which allowed an inside commercial amusement.
- A “commercial amusement (inside)” use could only become a *conforming* use on this property if/once it has obtained an SUP by the City Council through a public hearing process.
- The applicant has the burden of proof to establish that the enlargement of the non-conforming use:
 1. does not prolong the life of the nonconforming use;

2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, they can consider imposing as a condition the applicant's submitted site plan. If the Board were to grant the request and impose this as a condition to this request, the enlargement of the nonconforming use would be limited to what is shown on any such document.

Timeline:

October 7, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 10, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 10, 2015: 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 November 25th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th 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;
- the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

December 1, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, 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: DECEMBER 14, 2015

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment, in request No. **BDA 145-123**, on application of Robert Reeves and Associates, **grant** the request of this applicant for an enlargement of a nonconforming use found in Section 51A-4.704(b)(5) of the Dallas Development Code because the enlargement does not prolong the life of the nonconforming use, the enlargement would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right, and the enlargement will not have an adverse effect on the surrounding area. 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: 5 – Richardson, Coulter, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-124(SL)

BUILDING OFFICIAL'S REPORT: Application of Karl A. Crawley of Masterplan for a special exception to the fence height regulations at 5915 Desco Drive. This property is more fully described as Lot 4 & 5, Block E/5614, and part of Lot 1 & 8, Block D/5614, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 9 foot high fence, which will require a 5 foot special exception to the fence height regulations.

LOCATION: 5915 Desco Drive

APPLICANT: Karl A. Crawley of Masterplan

December 14, 2015 Public Hearing Notes:

- The Board Administrator circulated an email from the applicant at the briefing stating that the applicant was requesting that his application be delayed until Panel C's next public hearing (see Attachment A).

REQUEST:

A request for a special exception to the fence height regulations of 5' is made to construct and maintain an approximately 6' 4" high open iron picket fence with an arched open wrought iron picket gate that reaches 9' in height in the one of the site's

two front yard setbacks (Desco Drive) on a site that being developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

- Site: R-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. BDA 045-181, Property located at 5831 Desco Drive (two lots west of the subject site)
On April 20, 2005, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 2' 6", and imposed the following condition to the request: Compliance with a revised submitted site plan and elevation to be submitted to the Board Administrator indicating the fence, column and gate dimensions specified above is required. The case report stated that the original request was made in conjunction with constructing a 6' 6"-high open metal tube fence with 6' 6"-high columns, and a 6' 6"-high open iron tube entry gate in the 40'-Desco Drive front yard setback on a site

developed with a single family home but how the applicant offered at the public hearing to reduce the height of the fence in the Desco Drive front yard setback to 4' whereby the only item to be "excepted" by the board would be the proposed gate and entry columns in the Desco Drive front yard setback.

2. BDA 056-111, Property located at 5831 Desco Drive (four lots southwest of the subject site)

On May 15, 2006, the Board of Adjustment Panel C granted a request for special exception to the fence height regulations of 3', and imposed the following condition to the request: Compliance with the submitted site plan and elevation is required.

The case report stated that the request was made in conjunction with completing and maintaining (according to the submitted site plan and revised "proposed fence elevation") an approximately 6' 6" open picket fence with 7' high columns in the site's 40' Desco Drive and Douglas Avenue front yard setbacks on a site developed with a single family home.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 6' 4" high open iron picket fence with an arched open wrought iron picket gate that reaches 9' in height in the one of the site's two front yard setbacks (Desco Drive) on a site that being developed with a single family home.
- The subject site is zoned R-1ac(A).
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is located between Desco Drive and Watson Avenue. Regardless of how the single-family structure being developed on the site is oriented to front south to Desco Drive and to back to northward to Watson Avenue, the site has two 40' front yard setbacks since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- The applicant has chosen to make application only for a proposed fence to exceed 4' in height in the Desco Drive front yard setback, and not to address any existing or proposed fence that exceeds/will exceed 4' in height in the site's Watson Avenue front yard setback, or that may be located in any required visibility triangle.

- The applicant has submitted a site plan with partial elevations of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 108” or 9’.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 175’ in length parallel to the Desco Drive and approximately 30’ perpendicular to Desco Drive on the east and west sides of the site in the front yard setback.
 - The fence/gate proposal is represented as being located approximately 2’ -10’ from the site’s Desco Drive front property line or approximately 14’ – 22’ from the pavement line.
- The proposal is located across from two single family homes, neither property appears to have a fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area (the block from Douglas Avenue and Preston Road) and noted two other fences that appeared to be above 4’ in height and located in a front yard setback. One fence was immediately east of the subject site (an approximately 5’ high chain link fence with no recorded BDA history), and the other fence about four lots to the southwest (an approximately 6.5’ high open picket fence with 7’ high columns that is a result of an approved fence height special exception request in 2006: BDA 056-011 - see the Zoning/BDA History section of this case report for additional details).
- As of December 4th, one letter has been submitted in support of the request, and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5’ will not adversely affect neighboring property.
- Granting this special exception of 5’ with a condition imposed that the applicant complies with the submitted site plan with partial elevations would require the proposal exceeding 4’ in height in the front yard setback to be constructed maintained in the location and of the heights and materials as shown on this document.
- If the Board were to grant this request, no exception would be provided to the fence height regulations with regard to any existing or proposed fence that may exceed 4’ in height and be located in the site’s front yard setback along Watson Drive, and no exception would be provided to the visual obstruction regulations with regard to any item that may be or is proposed to be located in a visibility triangle on the site.

Timeline:

October 23, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

November 10, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 10, 2015: 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 November 25th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th 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.

December 1, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: DECEMBER 14, 2015

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

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment in request No. **BDA 145-124**, hold this matter under advisement until **February 18, 2016**.

SECONDED: **Schulte**

AYES: 5 – Richardson, Coulter, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-125(SL)

BUILDING OFFICIAL’S REPORT: Application of Karl A. Crawley of Masterplan for a special exception to the fence height regulations at 5545 Park Lane. This property is more fully described as Lot 9, Block B/5592, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and

maintain a 6 foot high fence, which will require a 2 foot special exception to the fence height regulations.

LOCATION: 5545 Park Lane

APPLICANT: Karl A. Crawley of Masterplan

REQUEST:

A request for a special exception to the fence height regulations of 2' is made to construct and maintain an approximately 5' 4" high open iron picket fence and gate with 5' 6" high masonry columns in the site's front yard setback on a site that being developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-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:

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|--|---|
| 1. BDA 045-291, Property located at 5600 Park Lane (the lot southeast of the subject site) | On September 21, 2005, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 6', and imposed the following |
|--|---|

condition to the request: Compliance with the submitted revised site plan/landscape/elevation plan is required. The case report stated that the requests were made in conjunction with maintaining an 8' high solid board-on-board wood fence and gate (with a 10'-high arbor over the gate) located in the 40'-front yard setbacks along Park Lane and Hathaway Street; and a 6'-high open chain link fence in the Hathaway Street front yard setback.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 5' 4" high open iron picket fence and gate with 5' 6" high masonry columns in the site's front yard setback on a site that being developed with a single family home.
- The subject site is zoned R-1ac(A).
- 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 site is located at the northwest corner of Park Lane and Hathaway Street. The subject site has one front yard setback along Park Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 10' required side yard along Hathaway Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 9' high fence would be allowed by right. The site's Hathaway Street frontage is a side yard since there is no continuity of an established front yard setback to maintain along this street. (The property to the north of the subject site faces/fronfs north to Winston Court).
- No part of the application is made to address any fence in the site's Hathaway Street side yard setback.
- The applicant has submitted a site plan and partial elevations of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 66" or 5' 6".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 185' in length parallel to the Park Lane and approximately 40' perpendicular to Park Lane on the east and west sides of the site in the front yard setback.
 - The fence proposal is represented as being located approximately on the Park Lane front property line or approximately 16' from the pavement line.
 - The gate is represented as being located approximately 10' from the Park Lane front property line or approximately 26' from the pavement line.
 - A continuous row of Needlepoint Hollies are located immediately inside of the proposed fence along Park Lane.

- The proposal is located across from one single family home, a property that has no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a front yard setback. This fence is located immediately southeast of the subject site and appears to be an approximately 8' high solid wood fence. This fence is a result of a request for a fence height special exception granted by Board of Adjustment Panel B in 2005: BDA 045-291 (see the Zoning/BDA History section of this case report for additional details).
- As of December 4th, 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 exception to the fence height regulations of 2' will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan and partial elevations would require the proposal exceeding 4' in height in the front yard setback to be constructed maintained in the location and of the heights and materials as shown on these documents.

Timeline:

October 28, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 10, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 10, 2015: 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 November 25th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th 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.

December 1, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code

Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: DECEMBER 14, 2015

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

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move that the Board of Adjustment, in request No. **BDA 145-125**, on application of Karl A. Crawley, **grant** the request to construct and maintain an 8-foot 6-inch high fence in the property’s front yard as a special exception to the fence height requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with submitted site plan and partial elevations is required.

SECONDED: Coulter

AYES: 5 – Richardson, Coulter, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Schulte

I move to adjourn this meeting.

SECONDED: Coulter

AYES: 5 – Richardson, Coulter, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

1:29 P. M. - Board Meeting adjourned for **December 14, 2015.**

Bruce Richardson, CHAIR

BOARD ADMINISTRATOR

BOARD SECRETARY

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