

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, 5ES, COUNCIL CHAMBERS  
MONDAY, MARCH 16, 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, Phil Erwin, Chief Arborist, Danielle Jimenez, Planner, David Lam, Engineer, 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, Phil Erwin, Chief Arborist, Danielle Jimenez, Planner, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

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**11:07 a.m.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 16, 2015** docket.  
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**1:07 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.

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel B February 19, 2015 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MARCH 16, 2015**

MOTION:           None

The minutes were approved without a formal vote.

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**FILE NUMBER:**    BDA 145-028

**BUILDING OFFICIAL'S REPORT:** Application of Vincent Yim, represented by Audra Buckley of Permitted Development, for a request to enlarge a nonconforming use at 3409 Spring Avenue. This property is more fully described as Lot 10, Block 5/1789, and is zoned PD595 (CC), which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming multifamily use, which will require a request to enlarge a nonconforming use.

**LOCATION:**           3409 Spring Avenue

**APPLICANT:**        Vincent Yim  
                          Represented by Audra Buckley of Permitted Development

**REQUEST:**

A request is made to enlarge a nonconforming "multifamily" use by increasing the number of units of the existing structure on the subject site from 5 units to 7 units.

**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:**

<u>Site:</u>	PD No. 595(CC) (Planned Development, Community Commercial)
<u>North:</u>	PD No. 595(CC) (Planned Development, Community Commercial)
<u>South:</u>	PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)
<u>East:</u>	PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)
<u>West:</u>	PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)

### **Land Use:**

The subject site is developed with a multifamily structure/use. The area to the north is developed with retail uses; and the areas to the east, south, and west appear to be developed with residential uses.

### **Zoning/BDA History:**

1. BDA 123-031, Property located at 3409 Spring Street (the subject site)  
On April 15, 2013, the Board of Adjustment Panel C granted a request for a special exception to reinstate nonconforming use rights requested in conjunction with obtaining a Certificate of Occupancy (CO) for a “multifamily” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

## **GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on enlarging a nonconforming multifamily” use by increasing the number of units of the existing structure on the subject site from 5 units to 7 units.
- The subject site is zoned PD No. 595 (CC) – a zoning district that does not permit a multifamily use.
- A “multifamily” use could only become a *conforming* use on this property if/once it has been rezoned by the City Council through a public hearing process.

- 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.
- A document is included in the case file stating that the multifamily use for property at 3409 Spring Avenue has been identified by Building Inspection to be a nonconforming use.
- A copy of a Certificate of Occupancy is included in the case file for a “multi-family dwelling (CO #1501051104) issued on January 6, 2015.
- 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 and a floor plan. The site plan makes representation of an “existing two story bldg. 3,300 SF” on the site. The submitted floor plan makes a representation of 5 units, 1 office, and 1 storage area.
- The applicant has stated that previous use on the subject site was multifamily with a barber and beauty shop as accessory uses under the previous zoning, and that the two accessory uses were later converted to efficiency apartments in the early 80’s bringing the total number of units from 5 to 7 in the early 1980’s but with no city records to document that change.
- The applicant states that recent renovations have been made to the interior of the existing building on the 5 existing residential uses with plans for further renovations for the remaining two upon the board’s approval.
- The applicant states that the date in which the Board of Adjustment reinstated the nonconforming use on the subject site in 2013 (BDA 123-031), only 5 of the 7 units were available, and that current owner has obtained a Certificate of Occupancy for the existing 5 units.
- The applicant has the burden of proof to establish that the enlargement of the nonconforming 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 any or all of the applicant’s submittals (site plan, floor plan). If the Board were to grant the request and impose any or all of these submittals as conditions, the

enlargement of the nonconforming use would be limited to what is shown on any such document.

**Timeline:**

January 6, 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.

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

February 10, 2015: The Board Administrator 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 February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> 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.

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: MARCH 16, 2015**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Schulte**

I move that the Board of Adjustment grant application **BDA 145-028** 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.

**SECONDED: Beikman**

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

**NAYS:** 0 –

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 145-030

**BUILDING OFFICIAL’S REPORT:** Application of Celia Lopez, represented by Elias Rodriguez of Construction Concepts, for a special exception to the landscape regulations at 247 W. Davis Street. This property is more fully described as Lot 1, Block 3/3325, and is zoned PD830 (Subdistrict 6), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 247 W. Davis Street

**APPLICANT:** Celia Lopez  
Represented by Elias Rodriguez of Construction Concepts

**REQUEST:**

A request for a special exception to the landscape regulations is made to maintain a restaurant structure/use (Pier 247), and not fully meet the landscape regulations.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;

- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval given that in his opinion the applicant has demonstrated the special exception will not adversely affect neighboring property and strict compliance with the requirements of the ordinance will unreasonably burden the use of the property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 830 (Planned Development)  
North: PD 160 (Planned Development)  
South: PD 830 (Planned Development)  
East: PD 830 (Planned Development)  
West: PD 830 (Planned Development)

**Land Use:**

The site is developed with a restaurant structure/use (Pier 247). The area to the north is vacant; the area to the east is developed with surface parking uses; and the areas to the south and west are developed with retail uses.

**Zoning/BDA History:**

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|--|---|
| <ol style="list-style-type: none"> <li>1. BDA 134-083, Property located at 247 W. Davis Street (the subject site)</li> </ol> | <p>On November 17, 2014, the Board of Adjustment Panel C denied a request for a special exception to the landscape regulations without prejudice. The case report stated that the request was made to maintain a restaurant structure/use (Pier 247), and not fully meet the landscape regulations.</p> |
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**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on maintaining a restaurant structure/use (Pier 247), and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site does not comply with Article X provisions for the mandatory perimeter landscape strip and design standard requirements.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new construction and remodel of a restaurant.
- The Chief Arborist's memo lists the following deficiencies related to required landscaping:
  1. The proposed landscape plan does not comply with Article X provisions for the mandatory perimeter landscape. The north perimeter landscape buffer strip is less than the mandatory 10' width required and is currently covered with loose rock. The proposal is to restore the minimum code standard with "natural grass, ground cover, or other natural plant materials."
  2. The proposed plan does not identify any Article X design standards.
- The Chief Arborist's memo lists the following factors for consideration:
  - The property is within PD 830, Subdistrict 6, with residential adjacency to the north. Subdistrict 6 has additional landscape requirements for street trees, and surface parking landscaping which the site does comply with.
  - The current perimeter buffer strip trees on the north row are all planted approximately 1' off the perimeter screening fence. The plan shows the trees to be either adjusted or replaced to be offset from the fence line and the parking lot.
  - In a significant site adjustment, the proposed plan removes a parking space near the mature elm tree and restores the area for landscaping which also reduces the necessity for screening of off-street parking facing Davis Street. Additional shrub materials are proposed in the expanded landscape bed, and additional modifications are being made to provide required sidewalk width along Davis Street.
  - On the east end of the north perimeter buffer, a dumpster and enclosure had been identified in previous plans. The current plan shows this same area to remain enclosed and represented on the plan separately from the majority of the perimeter buffer area. The enclosure itself would not be prohibited within a buffer but a use for a dumpster would not be authorized under Article X. The dumpster use is not recognized because there is not door identified on the plan for this area. No door for access may be provided in the location adjacent to the paved surface of the parking lot.
- The City of Dallas Chief Arborist recommends approval of the submitted landscape plan. The Chief Arborist recommends approval given that in his opinion the applicant has demonstrated the special exception will not adversely affect neighboring

property and strict compliance with the requirements of the ordinance will unreasonably burden the use of the property.

- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted landscape plan as a condition to the request, the site would be provided exception from full compliance with the mandatory perimeter landscape strip and design standard requirements of Article X.

### **Timeline:**

December 9, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 9, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

February 9, 2015: The Board Administrator 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 February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> 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.

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and

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

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

March 5, 2015: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: MARCH 16, 2015**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Schulte**

I move that the Board of Adjustment grant application **BDA 145-030** 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 alternate landscape plan is required.

**SECONDED: Beikman**

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

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 145-032

**BUILDING OFFICIAL’S REPORT:** Application of Arturo Martinez for a special exception to the fence height regulations at 2954 Tres Logos Lane. This property is more fully described as Lot 44, Block 12/8049, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence regulation.

**LOCATION:** 2954 Tres Logos Lane

**APPLICANT:** Arturo Martinez

**REQUEST:**

The following request has been made on a site that is developed with a single family home/use:

1. A request for a special exception to the fence height regulations of 4' is made to construct a 6' high white vinyl fence with a 2' high brick base parallel and perpendicular to McRae Road.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**STAFF RECOMMENDATION (FENCE HEIGHT):**

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

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS (FENCE HEIGHT):**

- This request focuses on constructing a 6' high white vinyl fence with a 2' high brick base, parallel and perpendicular to McRae Road, in the required front yard on a site developed with a single family home/use.

- The Dallas Development Code states that in all residential districts, except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is located at the southwest corner of Tres Logos Lane and McRae Road. Regardless of how the existing structure is oriented to front Tres Logos Lane, the subject site has two front yard setbacks, one along each street. The site has a 20' required front yard along Tres Logos Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 7.5' required front yard along McRae Road, the longer of the two frontages of this corner lot, which is typically regarded as a side yard. But the site's McRae Road frontage, though it functions as a side yard, is treated as a front yard setback to maintain the continuity of the front yard setback established by the lots to the south zoned R-7.5(A) that front/are oriented northward towards McRae Road.
- An R-7.5(A) Single Family Residential District requires the minimum front yard setback to be 25'. However, according to Sec. 51A-4.401(a)(3), "If a building line that is established by ordinance requires a greater or lesser front yard than prescribed by this section, the building line established by ordinance determines the minimum required front yard." Therefore, the platted building lines of 20' along Tres Logos Lane and 7.5' along McRae Road supersedes the 25' front yard setback required in an R-7.5(A) District.
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 90' in length parallel to McRae Road, and extending approximately 7.5' in length perpendicular on the north and south sides of the 7.5' required front yard.
  - The proposal is represented as being located approximately 10' from the pavement line and approximately 0' from the property line.
- The Current Planner conducted a field visit of the site and surrounding area and noted two other visible fences above 4 feet in height which appeared to be located in a front yard setback, fences with no recorded BDA history.
- Two homes front the proposal.
- As of March 10<sup>th</sup>, 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' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted landscape plan would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials shown on these documents.
- Approval of this special exception to the fence height regulations does not provide any relief to any existing or proposed noncompliance with Code required visual obstruction regulations.

**Timeline:**

January 15, 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.

February 9, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 18, 2015: The Current Planner shared the following information with the applicant via e-mail:

- 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 February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> 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.

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: MARCH 16, 2015**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Schulte**

I move that the Board of Adjustment grant application **BDA 145-032** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development code:

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

**SECONDED: Beikman**

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

**NAYS:** 0 –

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 145-021

**BUILDING OFFICIAL’S REPORT:** Application of Jimmy Baugh, represented by Robert Reeves of Robert Reeves and Associates, for a special exception to the fence height regulations at 4606 Walnut Hill Lane. This property is more fully described as part of Lot 23, Block 5543, 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 an 8 foot 6 inch high fence, which will require a 4 foot 6 inch special exception to the fence height regulations.

**LOCATION:** 4606 Walnut Hill Lane

**APPLICANT:** Jimmy Baugh  
Represented by Robert Reeves of Robert Reeves and Associates

**REQUEST:**

A request for a special exception to the fence height regulations of 4’ 6” is made to construct and maintain a 7’ high “wall faced with Lueders limestone” with 7’ 6” high columns, and an approximately 6’ – 7’ high gate flanked with 8’ 6” high entry columns on a site 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 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 990-271, property at 9963 Rockbrook Lane (two lots east of the subject site)

On May 15, 2000, the Board of Adjustment Panel C granted requests for special exceptions to the single family use and fence height regulations of 2' and imposed the following conditions: to the single family use special exception: compliance with the submitted site plan is required; and applicant must submit a valid deed restriction prohibiting the additional dwelling unit of the site from being used as a rental accommodation; and to fence height special exception: 1) In conjunction with retaining the 6 foot high brick/masonry wall, a tree survey or a landscape plan documenting the trees to be retained adjacent to the existing wall must be submitted, and 2) a landscape plan documenting the retention of ivy vines on the existing wall must be submitted.

The case report stated the requests were made to maintain an existing 6' high brick wall along Walnut Hill Lane and construct/maintain an extension of this wall an additional 90 feet westward along Walnut Hill Lane, and to construct/maintain a pool house/dwelling unit structure on the site.

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a 7' high "wall faced with Lueders limestone" with 7' 6" high columns, and an approximately 6' – 7' high gate flanked with 8' 6" high entry columns on a site developed with a single family home.

- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant had submitted a site plan and elevations of the proposal in the front yard setback prior to the February 19<sup>th</sup> hearing indicating that it reaches a maximum height of 8' 6". The applicant submitted a revised site plan and a conceptual plan at the February 19<sup>th</sup> hearing that made certain amendments to the location of the proposal and landscape materials adjacent to it (see Attachment A). (No revised elevation has been submitted).
- The following additional information was gleaned from the originally submitted site plan:
  - The fence proposal is represented as being approximately 150' in length parallel to the street including a recessed entryway feature.
  - The fence proposal is represented as being located approximately 3' from the front property line or about 11' from the pavement line.
  - The gate proposal is represented as being located approximately 17' from the front property line or about 25' from the pavement line.
  - A "landscaped area" noted on the street side of the wall, and notations of "Yaupon Holly" bushes on the interior side of the wall adjacent to the proposed fence.
- The following additional landscape-related information was gleaned from the submitted elevations:
  - "3 gal boxwood," "3 gal. miscanthus grass," "Nellie R. Stevens Holly," and "Tree Form Yaupon Holly."
- The following additional information was gleaned from the *revised* submitted site plan:
  - The fence proposal is represented as being approximately 150' in length generally parallel to the street including a recessed entryway feature.
  - The fence proposal is represented as being located approximately 3' – 12' from the front property line or about 10' – 19' from the pavement line.
  - The gate proposal is represented as being located approximately 17' from the front property line or about 25' from the pavement line.
  - A "landscaped area" noted on the street side of the wall.
- The following additional information was gleaned from the submitted conceptual plan on the street side of the proposed fence:
  - 45, 3 gallon Boxwoods
  - 28, 3 gallon Miscanthus grass
  - 5, 30 gallon Nellie R Stevens holly
  - 240 seasonal color in 4" pots.
- The fence proposal is located on the site where three lots would have direct/indirect frontage to it – one of which (the lot northeast of the site) has an approximately 6' high wood fence with no recorded BDA history.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other visible fences above 4 feet high which appeared to be located in a front yard setback – an approximately 5' high solid brick fence located immediately east of the subject site with no recorded BDA history, and an approximately 6' high

solid masonry fence located two lots to the east of the subject site. The Board of Adjustment granted a fence height special exception on this adjacent property (BDA 990-271) in 2000 (see the “Zoning/BDA History” section of this case report for additional details).

- As of March 9, 2015, 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 revised site plan, conceptual plan, and elevations would require the proposal exceeding 4’ in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

### **Timeline:**

December 5, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 14, 2015: The Board Administrator contacted the applicant and emailed the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 6<sup>th</sup> 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.”

February 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

February 19, 2015: The Board of Adjustment Panel C conducted a public hearing on this application. The Board Administrator circulated a revised site plan and conceptual plan to the Board at the briefing (see Attachment A). The Board delayed action on this application until their next hearing to be held on March 16, 2015.

February 27, 2015: The Board Administrator sent a letter to the applicant that noted the decision of the panel, and the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2015**

APPEARING IN FAVOR: Robert Reeves, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Carreon**

I move that the Board of Adjustment in request No. **BDA 145-021**, hold this matter under advisement until **March 16, 2015**.

SECONDED: **Brannon**

AYES: 4 – Richardson, Carreon, Sibley, Brannon

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: MARCH 16, 2015**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment grant application **BDA 145-021** 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 revised site plan, conceptual/landscape plan, and elevation is required.

**SECONDED: Beikman**

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

**NAYS:** 0 –

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 145-027

**BUILDING OFFICIAL’S REPORT:** Application of Karl A. Crawley of Masterplan for a variance to the front yard setback regulations at 3409 (AKA 3407) N. Hall Street. This property is more fully described as Lot 15A, Block A/922, and is zoned PD193 (O-2), which requires a front yard setback of 20 feet and an additional setback required for the portion of the building that is perpendicularly across from an MF-2 subdistrict; and exceeds 36 feet in height, equal to one-half the height of the portion of the building that exceeds 36 feet in height, up to a maximum total setback of 50 feet. The applicant proposes to construct a structure and provide a 20 foot front yard setback, which will require a 30 foot variance to the front yard setback regulations.

**LOCATION:** 3409 (AKA 3407) N. Hall Street

**APPLICANT:** Karl A. Crawley of Masterplan

**March 16, 2015 Public Hearing Notes:**

- The Board Administrator informed the Board at the briefing of the March 16<sup>th</sup> discovery that the subject site was located in the Turtle Creek Environmental Corridor and that because of this the front yard setback on the subject site was 25 feet. The applicant testified at the public hearing that he would provide a 25 foot front yard setback even though he did not have an amended site plan that indicated such. The applicant submitted additional materials to the Board at the public hearing.

**REQUEST:**

A request for a variance to the front yard setback regulations of 30’ is made to construct and maintain a 20 story, approximately 220’ high multifamily tower (Fountain Park) on a site that is currently in part developed with a 2 story office and in part undeveloped, a

portion which would exceed 36' in height and be located 20' from the front property line or 30' into the required 50' front yard setback for the portion exceeding 36' in height.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

**STAFF RECOMMENDATION:**

Denial

Rationale:

- While the site is somewhat sloped, the applicant had not substantiated at the time of the March 3<sup>rd</sup> staff review team meeting how this feature or its shape or area precluded him from developing it in a manner commensurate with other developments found on similarly-zoned PD 193 (O-2) lots.
- Staff concluded that the size, shape, or slope of the subject site does not preclude that applicant from developing it with a structure/use that can comply with code-required setbacks.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (O-2) (Planned Development District, Office)  
North: PD 193 (MF-2) (Planned Development District, Multifamily)  
South: PD 193 (O-2) (Planned Development District, Office)  
East: PD 193 (O-2) (Planned Development District, Office)  
West: PD 193 (O-2) (Planned Development District, Office)

**Land Use:**

The subject site is in part developed with a two story office use, and in part undeveloped. The area to the north is developed with a park (Lee Park), and the areas to the south, east and west are developed with residential uses.

**Zoning/BDA History:**

1. BDA 134-094, Property located at 3409 N. Hall Street (the subject site)      On October 31, 2014, an application was withdrawn by the applicant – an application for variances to the front, side, and rear yard setback regulations that had tentatively been assigned to the Board of Adjustment Panel C November 17<sup>th</sup> public hearing.
  
2. BDA 989-268, Property located at 3407 N. Hall Street (the subject site)      On August 16, 1999, the Board of Adjustment Panel C granted requests for variances to the front, side, and rear yard setback regulations and imposed the submitted conceptual site plan and elevation as a condition to the request.  
The case report stated the request was made in conjunction with constructing/maintaining a 17-story, approximately 100,000 square foot mixed use tower on a site developed with an office use and an undeveloped lot.

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a 20 story, approximately 220' high multifamily tower on a site that is currently in part developed with a 2 story office and in part undeveloped, a portion which would exceed 36' in height and be located 20' from the front property line or 30' into the required 50' front yard setback for the portion exceeding 36' in height.
- Structures, other than single family structures, on lots zoned PD 193 (O-2) are required to provide a minimum front yard setback of 20'. Additionally, in the O-2, GR, and LC subdistricts, if a building is erected or altered to exceed 36 feet in height and the building site has a front yard that is either perpendicularly contiguous to or perpendicularly across an adjoining street from the TH, MF-1, or MF-2 subdistrict, an additional front yard setback must be provided that is one-half the height of the portion of that exceeds 36 feet in height, up to a maximum total setback of 50 feet. The additional setback is only required for the portion of the building that: is perpendicularly across from the TH, MF-1, or MF-2 subdistrict; and exceeds 36 feet in height.
- The zoning to the north of the subject site across N. Hall Street is zoned PD 193 (MF-2 subdistrict).

- A site plan has been submitted denoting that the proposed structure is located 20' from the site's front property line.
- An elevation/section has been submitted of the proposed structure that indicates it to be 20 levels and approximately 220' in height, and 20' from the front property line.
- The applicant states that the proposed development would have 53 units, be approximately 100,000 square feet, and that subject site consists of two small lots which will have to be replatted into one lot prior to development.
- According to DCAD records, the "improvements" at 3407 N. Hall Street is a "converted residence" that is 3,424 square feet in area built in 1940. According to DCAD records, 3409 N. Hall Street is vacant.
- The subject site is somewhat sloped, virtually rectangular in shape, and is according to the application, 0.48 acres (or approximately 21,000 square feet) in area. The site is zoned PD 193 (O-2).
- The applicant has the burden of proof in establishing the following:
  - That granting the variances 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 variances are 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 PD 193 (O-2) zoning classification.
  - The variances 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 PD 193 (O-2) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan and elevation as a condition, the structure in the front yard setback would be limited to what is shown on this document– which is a 20 story, approximately 220' high tower, where the portion of it that exceeds 36' in height would be located 20' from the front property line or 30' into the required 50' front yard setback for the portion of it that exceeds 36' in height.

**Timeline:**

December 22, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 10, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

February 10, 2015: The Board Administrator shared the following information with the applicant via email:

- 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 February 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 6<sup>th</sup> 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."

February 25, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

### **BOARD OF ADJUSTMENT ACTION: MARCH 16, 2015**

#### **APPEARING IN FAVOR:**

Karl Cralwy, 900 Jackson St, Dallas, TX  
Paul Cheng, 2525 McKinney #B, Dallas, TX  
Robert Baldwin, 3904 Elm #B, Dallas, TX

#### **APPEARING IN OPPOSITION:**

Tim Doyle, 3225 Turtle Creek #2205, Dallas, TX  
Bryan Rose, 3225 Turtle Creek #1630, Dallas, TX  
Lori Herbsr, 3225 Turtle Creek #1507, Dallas, TX  
Micah Byrnes, 3699 McKinney #222, Dallas, TX  
Michael Jung, 4400 BOA Plaza, Dallas, TX  
Anthony Page, 3210 Carlisle St #1, Dallas, TX  
Tara Arancibia, 3535 N Hall St., Dallas, TX  
George Velon, 3225 Turtle Creek #247, Dallas, TX  
John Sieber, 3225 Turtle Creek #144, Dallas, TX  
George Poston, 3407 N Hall St., Dallas, TX

**MOTION: Schulte**

I move that the Board of Adjustment, in request No. **BDA 145-027**, on application of Karl A Crawley, **deny** the front yard setback variance **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant, and that it is not a restrictive 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 is a self-created or personal hardship.

**SECONDED: Sibley**

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

**NAYS:** 0 –

**MOTION PASSED:** 5 – 0 (unanimously)

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**MOTION: Schulte**

I move to adjourn this meeting.

**SECONDED: Coulter**

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

**NAYS:** 0 –

**MOTION PASSED:** 5 – 0 (unanimously)

**2:33 P. M.** - Board Meeting adjourned for **March 16, 2015.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

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BOARD SECRETARY

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