

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1F AUDITORIUM
MONDAY, MAY 16, 2016**

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

MEMBERS ABSENT FROM BRIEFING: Peter Schulte, regular member

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

MEMBERS ABSENT FROM HEARING: Peter Schulte, regular member

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

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Mary McCullough, Asst. City Attorney, Todd Duerksen, Dev. Code Specialist, Clay Buehrle, Engineering, Jennifer Muñoz, Senior Planner, and Trena Law, Board Secretary

1:00P.M. The Board of Adjustment staff conducted a briefing and Public Hearing on the Board of Adjustment's **May 16, 2016** docket.

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 April 18, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 16, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-042(SL)

BUILDING OFFICIAL'S REPORT: Application of Mina Haghiri for a special exception to the off-street parking regulations at 3492 E. Rosemeade Parkway. This property is more fully described as Lot 12, Block Q/8751, and is zoned CR, which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for a medical clinic or ambulatory surgical center use and provide 15 of the required 20 parking spaces, which will require a 5 space special exception to the off-street parking regulations.

LOCATION: 3492 E. Rosemeade Parkway

APPLICANT: Mina Haghiri

REQUEST:

A request for a special exception to the off-street parking regulations of 5 spaces is made to transition the use within an existing approximately 3,900 square foot one-story structure on the subject site from office to medical clinic or ambulatory surgical center use, and provide 15 (or 75 percent) of the 20 required off-street parking spaces.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception

would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.

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

(B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 5 spaces shall automatically and immediately terminate if and when the medical clinic or ambulatory surgical center use is changed or discontinued.

Rationale:

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

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community retail)
North: City of Carrollton
South: MF-1 (Multifamily residential)
East: CR (Community retail)
West: CR (Community retail)

Land Use:

The subject site is developed with an existing one-story structure that has approximately 3,900 square feet of floor area that the applicant intends to retain on the site and lease with medical clinic use which requires a greater number of off-street parking spaces than the previous use on the subject site (office), and a greater number than what the applicant proposes to provide. The areas to the north, east, and west are developed with commercial/retail uses; and the area to the south is developed with multifamily uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on transitioning the use within an existing approximately 3,900 square foot one-story structure on the subject site from office to medical clinic or ambulatory surgical center use, and providing 15 (or 75 percent) of the 20 required off-street parking spaces.

- The Dallas Development Code requires the following off-street parking requirement:
 - Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area. (Office use is required to provide 1 space per 333 square feet of floor area).
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the “medical clinic or ambulatory surgical center” use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 5 spaces (or a 25 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 5 spaces shall automatically and immediately terminate if and when the medical clinic use is changed or discontinued, the applicant would be allowed to lease and maintain the structure on the site with this specific use (“medical clinic or ambulatory surgical center”) with the specified square footage, and provide 15 of the 20 code required off-street parking spaces.

Timeline:

February 26, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 12, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 12, 2016: The Board Administrator emailed the applicant the following information:

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

May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

May 5, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objection."

BOARD OF ADJUSTMENT ACTION: MAY 16, 2016

APPEARING IN FAVOR: Mina Haghiri, 2936 Valley View Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move that the Board of Adjustment, in request **No. BDA 156-042**, on application of Mina Haghiri, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 5 spaces because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 5 spaces shall automatically and immediately terminate if and when the medical clinic or ambulatory surgical center use on the property is changed or discontinued.

SECONDED: **Coulter**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-043(JM)

BUILDING OFFICIAL'S REPORT: Application of Louise Elam for a special exception to the landscape regulations at 10770 Bekay Street. This property is more fully described as Lot 1C, Block 2/8059, and is zoned IR, 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: 10770 Bekay Street

APPLICANT: Louise Elam

REQUEST:

A request to provide an alternate landscape plan, which will require a special exception to the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS:

The board may grant a special exception to the requirements 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 under Subsection (a), the board shall consider the following factors:

1. The extent to which there is residential adjacency.
2. The topography of the site.
3. The extent to which landscaping exists for which no credit is given under this article.
4. 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 alternate landscape plan is required.

Rationale for approval:

- Staff concurs with the Chief Arborist and recommends approval of this request with the condition imposed above because strict compliance with this article will unreasonably burden the use of this property and this special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	Industrial Research, IR
<u>North:</u>	Industrial Research, IR
<u>South:</u>	Industrial Research, IR
<u>East:</u>	Industrial Research, IR
<u>West:</u>	Industrial Research, IR

Land Use:

The subject site is developed, but currently vacant. Previously, it was occupied as a building material site. Surrounding properties are similarly consistent with industrial uses including offices, heavy machinery, and outdoor storage of materials in all directions. The applicant is planning to redevelop an existing structure to provide new office and storage space.

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 constructing/maintaining structures on a lot currently vacant, and not fully provide required landscaping. More specifically, according to the City of Dallas Chief Arborist, the features shown on the submitted alternate landscape plan would not conform to Article X landscape regulation standards related to mandatory landscaping requirements.
- Section 51(A) 10.125. states the following requirements:
 - (3) Site trees.
 - (A) One tree having a caliper of at least two inches must be provided for each 4,000 square feet of lot area, or fraction thereof, with a minimum of four trees being provided, except for industrial uses in IM and IR districts, where one tree having a caliper of at least two inches must be provided for each 6,000 square feet of lot area, or fraction thereof, with a minimum of four trees being provided. *Emphasis added.*

- The proposed landscape plan reduces the tree count from the 79 site tree requirement for a 7.2 acre property, to 22 site trees concentrated around the office facility and Bekay Street frontage.
- The City of Dallas Chief Arborist states in a memo (see Attachment A) that the request in this case is triggered by the new construction of new office floor space to an existing facility in an IR district with improved fire lane access.
- The Chief Arborist listed several factors for consideration:
 1. The facility will have storage and maintenance applications which limit the landscaping area potential for the southern half of the property. Maintaining isolated landscape locations in an expansive and a currently impervious developed area, with a limited potential for tree shade, is costly and difficult to sustain. The primary public function of the site will be near Bekay Street and with the main office operations to the north end of the site where all landscaping will be installed.
 2. The site is an old facility in an IR district surrounded by many other industrial uses. The southern and eastern portions of the property surrounding the building have never been landscaped but have remained open for the general uses of the property.
 3. All other Article X requirements are met, including a street buffer and screening of off-street parking.
- The Chief Arborist recommends approval of the proposed landscape plan because strict compliance with the site tree requirements will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property.
- The applicant has the burden of proof in establishing the following:
 - The special exception complies with Section 51(A) 10.110.
- If the board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to the landscape regulations.

Timeline:

December 18, 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.

April 12, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

April 15, 2016: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

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

May 9, 2016: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A)

BOARD OF ADJUSTMENT ACTION: MAY 16, 2016

APPEARING IN FAVOR: Louise Elam, 1500 Marilla, 6FN, Dallas, TX
Robert Croysdale, 9724 Gatecrest Dr, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Carreon

I move that the Board of Adjustment, in Appeal No. **BDA 156-043**, on application of Louise Elam, **grant** the special exception to the landscape regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Coulter

AYES: 4 – Richardson, Coulter, Carreon, Beikman

NAYS: 1 - Sibley

MOTION PASSED: 4 – 1

FILE NUMBER: BDA156-044(JM)

BUILDING OFFICIAL’S REPORT: Application of Dan Patterson, represented by Wendy Millsap, for a special exception to the fence height regulations at 3209 Wendover Road. This property is more fully described as Lot 2, Block 2976, 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 and/or maintain a 6 foot high fence, which will require a 2 foot special exception to the fence height regulations.

LOCATION: 3209 Wendover Road

APPLICANT: Dan Patterson
Represented by Wendy Millsap

REQUEST:

A request for a special exception to the fence height regulations of up to 2’ is made to construct and maintain the following fences:

- Maintain an existing 6’ high chain-link fence from the north point of the property facing Wendover Rd., for 220 feet curving southbound, along the property line within the front yard building setback towards the new gates;
- Construct and maintain a new 6’ high chain-link fence from the north point of the property facing Wendover Rd., for 340 feet curving southbound, along the property line within the front yard building setback towards the new gates;
- Construct and maintain a new custom metal mesh fence with solid columns ranging in height from 5’ in height to a maximum of 6’ height along the entire property line and gated entry within the front yard building setback for about 688 feet, facing the street on Wendover Rd.

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-7.5(A) (Single family district 7,500 sq. ft.)
North: R-7.5(A) (Single family district 7,500 sq. ft.)
South: R-7.5(A) (Single family district 7,500 sq. ft.)
East: R-7.5(A) (Single family district 7,500 sq. ft.)
West: R-7.5(A) (Single family district 7,500 sq. ft.)

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 provides for different options and phasing of fences for the site.
- The current request includes a fence which was seemingly erected without permits before the applicant took ownership. It is approximately 220' long and 6' high beginning at the north end of the property. The applicant would like to maintain that fence while they consider other fencing options including either replacing that chain-link fence with a vinyl-coated chain-link fence of the same 6' height, or continuing the custom metal mesh fencing they plan to install at the new gated entryway and along the south end of the property.
- The existing 6' chain-link fence (220' long) requires a special exception to remain.
- The proposed replacement of that fence with a vinyl-coated chain-link fence with an expanded length total of 340' long from the north end of the property line, down to the new gated entryway, requires a special exception.
- They plan to install 182' of custom metal mesh fencing on the south end of the property northbound to the new entryway. They may choose to replace all front yard fencing with the 5'-6' high custom metal mesh fencing with solid columns for a combined total of 688' along Wendover Rd.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is zoned R-7.5(A), has a 25' front yard setback, and contains approximately 1.86 acres.
- The applicant has submitted a site plan/elevation of the proposal with notations indicating that the existing and proposed fences reach a maximum height of approximately 6'.

- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 688’ in length parallel to the street, and including the gated entryway fencing, in the 25’ front yard setback.
 - The proposal is represented as being located behind the property line, with no specific measurement noted.
- There are no houses directly facing the site. Mostly side yards front this lot. Surrounding homes do not seem to have front yard fences.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences higher than 4’ in front yard setbacks.
- As May 6, 2016, no letters have been submitted in opposition to the request. One letter in support was submitted on May 5, 2016 (Attachment A).
- 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/elevation would require the proposal exceeding 4’ in height in the front yard setback to be modified and maintained in the location and of the heights and materials as shown on this document.

Timeline:

- June 3, 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.
- April 12, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- April 15, 2016: The Board Administrator emailed the applicant the following information:
 - an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- May 2, 2016: Revised plans were submitted according to staff direction (Attachment A).
- May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction

Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: MAY 16, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Carreon

I move to grant that the Board of Adjustment grant application **BDA 156-044** 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/elevation is required.

SECONDED: Coulter

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-048(SL)

BUILDING OFFICIAL’S REPORT: Application of David E. Capps, represented by Audra Buckley of Permitted Development, for a special exception to restore a nonconforming use at 218 W. 10TH Street. This property is more fully described as Lot 15A, Block 41/3161, and is zoned PD-830 (Subdistrict 3), which limits the legal uses in the zoning district. The applicant proposes to restore a nonconforming medical clinic or ambulatory surgical center use, which will require a special exception to the nonconforming use regulations.

LOCATION: 218 W. 10TH Street

APPLICANT: David E. Capps
Represented by Audra Buckley of Permitted Development

REQUEST:

A request for a special exception to restore/reinstate nonconforming use rights for a medical clinic or ambulatory surgical center use on the subject site that was discontinued for a period of six months or more is made to obtain a Certificate of Occupancy (CO) for this use.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas Development Code states that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

BACKGROUND INFORMATION:

Zoning:

Site: PD 830 (Subdistrict 3) (Planned Development)
North: PD 830 (Subdistrict 3) (Planned Development)
South: PD 316 (Subarea 4) (Planned Development)
East: PD 830 (Subdistrict 3) (Planned Development)
West: PD 830 (Subdistrict 3) (Planned Development)

Land Use:

The subject site is developed with a vacant structure. The areas to the north, east, and west are developed with what appears to be office or medical clinic uses, and the area to the south is developed with retail uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on restoring/reinstating nonconforming use rights for a medical clinic or ambulatory surgical center use that has been discontinued for six months or more in order for the applicant to obtain a Certificate of Occupancy (CO) for this use.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time”.
- The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The nonconforming use regulations also state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The subject site is zoned PD 830 (Subdistrict 3) – a zoning district that does not permit a medical clinic or ambulatory surgical center use at this location.
- A document has been included in the case file that states the medical clinic or ambulatory surgical center use at 218. W. 10th Street has been identified by Building Inspection to be a nonconforming use.
- Building Inspection has stated that these types of special exception requests originate from when an owner/officer related to the property applies for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.
- If the Board were to grant this request, the nonconforming medical clinic or ambulatory surgical center use on the site would be subject to the possibility of an application that could be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The applicant could achieve conforming use status for the medical clinic or ambulatory surgical center use on the site with a change in zoning from the City Council.
- The owner could develop the site with any use that is permitted by right in the site’s existing PD 830 (Subdistrict 3) zoning classification.
- The applicant has the burden of proof in establishing the following related to the special exception request:

- There was a clear intent not to abandon the nonconforming medical clinic or ambulatory surgical center use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming medical clinic or ambulatory surgical center use rights that were lost when the use was abandoned for a period of six months or more.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

Timeline:

February 29, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 12, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 12, 2016: The Board Administrator emailed the applicant’s representative and emailed 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- 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.”

May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: MAY 16, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Carreon

I move to grant that the Board of Adjustment grant application **BDA 156-048** 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: Coulter

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-027(SL)

ORIGINAL BUILDING OFFICIAL’S REPORT: Application of Allan R. Brown, represented by Steven Dimitt, for variances to the front yard setback and height regulations at 1015 N. Carroll Avenue. This property is more fully described as Lot 5, Block 8/768, and is zoned PD 298 (Subarea 9), which requires a front yard setback of 30 feet and limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a structure and provide a 12 foot front yard setback, which will require an 18 foot variance to the front yard setback regulations, and to construct and maintain a structure with a building height of 45 feet, which will require a 9 foot variance to the maximum building height regulations.

REVISED BUILDING OFFICIAL’S REPORT: Application of Allan R. Brown, represented by Steven Dimitt, for variances to the front yard setback regulations and building height regulations at 1015 N. Carroll Avenue. This property is more fully described as Lot 5, Block 8/768, and is zoned PD 298 (Subarea 9), which requires a front yard setback of 24 feet 4 inches and limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a structure and provide a 0 foot front yard setback, which will require a 24 foot 4 inch variance to the front yard setback regulations, and with a building height of 45 feet, which will require a 9 foot variance to the maximum building height regulations.

LOCATION: 1015 N. Carroll Avenue

APPLICANT: Allan R. Brown
Represented by Steven Dimitt

ORIGINAL REQUESTS (March 21, 2016):

The following requests were originally made on a site that is in part undeveloped and in part developed with multifamily and office uses:

1. A variance to the front yard setback regulations of 18' had been made to construct and maintain an 8-unit townhome development that would be located in the site's two front yard setbacks on Swiss Avenue and North Carroll Avenue; and
2. A variance to the height regulations of 9' had been made to construct and maintain the aforementioned townhome development that would be 45' in height.

However on March 4, 2016, the applicant's representative submitted a letter (see Attachment A) that stated among other things that he had met with the neighborhood association and other neighbors since the filing of the application, and that in order to address some comments and concerns, he was significantly revising the entire development.

The Board was advised at the March 21st public hearing that as a result, the applicant no longer was seeking a variance to the front yard setback on Swiss Avenue or a variance to the height regulations but would seek variance to the front yard setback on North Carroll Avenue and a special exception to the off-street parking regulations. Lastly, the applicant had requested that the Board not consider the previously submitted plans or the variance requests that he submitted in January at the March hearing but requested that the Board delay consideration of this case until April.

UPDATED REQUESTS (April 18 and May 16, 2016):

An updated request for a variance to the front yard setback regulations of 24' 4" is made on a site that is in part undeveloped and in part developed with multifamily and office uses in order to construct and maintain a two, two-unit multifamily development to be located on the N. Carroll Avenue front property line or 24' 4" into this 24' 4" front yard setback.

While the applicant submitted revised plans that eliminated the need for variances to the front yard setback regulations along Swiss Avenue, to the off-street parking regulations, and to the height regulations, the request for the variance to the height regulations remains part of the application only for the fact that it was advertised and noticed for both the March and April public hearings, therefore must be acted upon by the Board at the April 18th public hearing.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION (March 21, 2016):

Delay action until April 18, 2016

Rationale:

- Staff was not able to reach conclusions on the applicant's requests for variances to the front yard setback and height regulations given that the applicant had written that since he filed the application and plans in January of 2016, he was in the process of significantly revising the entire development, and requested that the Board not consider the originally submitted plans or variance requests.

STAFF RECOMMENDATION (April 18 and May 16, 2016) front yard variance:

Denial without prejudice

Rationale:

- Staff concluded that the applicant had not substantiated how the variance was 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 it cannot be developed in a manner commensurate with the development upon other parcels of land with the same PD 298 (Subarea 9, MF-2 and CR), H/72 zoning district.

STAFF RECOMMENDATION (April 18 and May 16, 2016) height variance:

Denial without prejudice

Rationale:

- The applicant had revised his proposed development so that the height satisfies applicable zoning requirements therefore there is no longer a need for a variance to the height regulations.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 298 (Subarea 9, MF-2 and CR), H/72 (Planned Development, Historic)
<u>North:</u>	PD 298 (Subarea 9, R-7.5 & P), H/72 (Planned Development, Historic)
<u>South:</u>	PD 298 (Subarea 9, MF-2), H/72 (Planned Development, Historic)
<u>East:</u>	PD 298 (Subarea 13), H/72 (Planned Development, Historic)
<u>West:</u>	PD 298 (Subarea 9, MF-1), H/72 (Planned Development, Historic)

Land Use:

The subject site is in part undeveloped and in part developed with multifamily and office uses. The areas to the north and west are developed with multifamily uses; the area to the east is undeveloped; and the area to the south is developed with an office use.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (variances):

- The original request filed in January of 2016 focused on constructing and maintaining an 8-unit townhome development that would be located in the site's two front yard setbacks on Swiss Avenue and North Carroll Avenue, and that would be 45' in height.
- The Building Official had provided the following information relevant to this appeal prior to the March 21st public hearing:
 - The site is zoned PD 298 (Subarea 9, MF-2 and CR), H/72. PD 298, Subarea 9 conditions state the following: Subarea 9 is subject to regulations governing the R-7.5(A), TH-2(A), MF-2(A), MU-1, MU-1-D, and CR districts of Chapter 51(A). The zoning district category applicable to each tract in Subarea 9 is shown on Exhibit 298B. The MF-2(A) required front yard setback is 15' and the CR required front yard setback is 15'.
 - The zoning of the adjoining property on the N. Carroll Street frontage is PD 298 (Subarea 13) H/72 (Tract 1).
 - The appeal application references a required 30' front yard setback ("...set forth in the Peak's Suburban Ordinance #22352...") and requests an 18' variance to allow a 12' setback.
 - The following Historic Overlay 72 (H/72) requirement appears to be the basis for the required 30' front yard setback.
- On March 28, 2016, the Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator on this application (see Attachment D). This report stated the this property is required to provide a front yard setback of 24' 4" where the applicant

proposes to provide a 0 foot front yard setback which will require a 24' 4" variance to the front yard setback regulations.

- The applicant has submitted a revised site plan indicating that the proposed structure is located 40' from the Swiss Avenue front property line (represented by the applicant to be in compliance with this front yard setback), and located on the N. Carroll Avenue front property line (or represent by the applicant and in the Building Official's report as being 24' 4" into this 24' 4" front yard setback).
- According to DCAD records, the "main improvement" at 1015 N. Carroll Avenue is a "medical office building" with 24,618 square feet built in 1955.
- The subject site is flat, rectangular in shape, and according to the application is 1.79 acres in area.
- The site has two front yard setbacks given that it fronts two streets as any corner property would that is not zoned a single family, duplex, or agricultural district.
- The applicant has the burden of proof in establishing the following:
 1. That granting the variance to the front yard setback is 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.
 2. The variance would be 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 298 (Subarea 9, MF-2 and CR), H/72 zoning classification.
 3. The variance is not 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 298 (Subarea 9, MF-2 and CR), H/72 zoning classification.
- With regard to request for variance to the front yard setback regulations, if the Board were to grant this 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 a structure located on the N. Carroll Avenue the front property line or 24' 4" into this 24' 4" front yard setback.
- With regard to the request for variance to the height regulations, staff suggests that the Board deny this request without prejudice given that this request is no longer needed given revised plans that were submitted to staff after the March 21st public hearing.
- It was determined at the May 3rd staff review team meeting that part of one of the proposed structures shown on the submitted revised site plan is located in a 20' visibility triangle at a drive approach into the site from N. Carroll Avenue. The applicant has been advised that if the Board were to grant the request for a variance to the front yard setback regulations and impose the submitted revised site plan as a condition, no relief would be provided as it relates to visual obstruction regulations.

Timeline:

- January 21, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- February 9, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- February 9, 2016: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 11th 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 4, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- March 8, 2016: 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 Interim Building Official, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, and the Assistant City Attorneys to the Board.
- No review comment sheets were submitted in conjunction with this application.
- March 21, 2016: The Board of Adjustment Panel C conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on April 18, 2016.
- March 22, 2016: The Board Administrator wrote the applicant a letter that provided the board's action; and the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th deadline to submit additional evidence to be incorporated into the Board's docket materials.

- March 28, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application and beyond what was submitted at the March 21st public hearing (see Attachment C).
- March 29, 2016: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator on this application (see Attachment D).
- April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. 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 Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.
- No review comment sheets were submitted in conjunction with this application.
- April 7, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application and beyond what was submitted at the March 21st public hearing (see Attachment E).
- April 18, 2016: The Board of Adjustment Panel C conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on May 16, 2016.
- April 20, 2016: The Board Administrator wrote the applicant a letter that provided the board's action; and the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- April 27, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application and beyond what was submitted at the March 21st public hearing (see Attachment F).

May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2016

APPEARING IN FAVOR: Steve Dimitt, 2323 Ross Ave., Dallas, TX

APPEARING IN OPPOSITION: Michael Yucon, 4511 Swiss, Dallas, TX

MOTION: **Schulte**

I move to grant that the Board of Adjustment, in Appeal No. **BDA 156-027** hold this matter under advisement until **April 18, 2016**.

SECONDED: **Carreon**

AYES: 3 – Richardson, Coulter, Carreon

NAYS: 2 - Schulte, Beikman

MOTION PASSED: 3 – 2

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2016

APPEARING IN FAVOR: Steve Dimitt, 2323 Ross Ave., Dallas, TX
Wendy Millsap, 4530 Reiger Ave., Dallas, TX
Beth Anschuetz, 5953 Bryan Parkway, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move to grant that the Board of Adjustment, in Appeal No. **BDA 156-027** hold this matter under advisement until **May 16, 2016**.

SECONDED: **Beikman**

AYES: 4 – Carreon, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 16, 2016

APPEARING IN FAVOR: Steve Dimitt, 2323 Ross Ave., Dallas, TX
Kathy de la Vergie, 8214 Westchester Dr. #600, Dallas, TX
Jim Anderson, Swiss Avenue, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Coulter

I move that the Board of Adjustment, in Appeal No. **BDA156-027**, on application of Allan R. Brown, **grant** a 24 foot 4 inch variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: Beikman

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Beikman

I move that the Board of Adjustment, in request No. **BDA 156-027**, on application of Allan R. Brown **deny** the height variance **without** prejudice because the applicant's revised proposed development satisfies applicable zoning requirements; therefore, there is no longer a need for a variance to the height regulations.

SECONDED: Sibley

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Richardson

I move to adjourn this meeting.

SECONDED: Coulter

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

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

2:15 P. M. - Board Meeting adjourned for **May 16, 2016**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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