

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, June 19, 2018**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, Chair, Elizabeth Nelson, regular member, John Jones, regular member, Jay Narey, regular member Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: No One

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, David Nevarez, Engineering, Elaine Hill, Board Secretary, David Cossum, Director, Neva Dean, Asst. Director

MEMBERS PRESENT AT HEARING: Peter Schulte, Chair, Elizabeth Nelson, regular member, John Jones, regular member, Jay Narey, regular member Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No One

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, David Nevarez, Engineering, Phil Erwin, City of Dallas Chief Arborist, Elaine Hill, Board Secretary, Neva Dean, Assistant Director

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 19, 2018** docket.

1:04 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel A, May 22, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: June 19, 2018

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA178-066(OA)

BUILDING OFFICIAL’S REPORT: Application of Andrew Boshears, Murphey Oil USA, Inc., represented by William Lotz of Greenberg Farrow, for a special exception to the landscape regulations at 12505 E Northwest Highway. This property is more fully described as Lot 1A, Block A/8047 and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct/maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 12505 E Northwest Highway

APPLICANT: Andrew Boshears, Murphey Oil USA, Inc.
Represented by William Lotz of Greenberg Farrow

REQUEST:

A request for a special exception to the landscape regulations is made to construct and maintain a motor vehicle fueling station/convenience-store use/structure, and not fully meet the landscape regulations, more specifically, to provide small trees along Shiloh Road in the parkway as required street trees.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the landscape and tree preservation 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 alternate landscape plan is required.

Rationale:

- The Chief Arborist recommends approval of the alternative landscape plan because strict compliance with the Article X regulations for large street trees will unreasonably burden the use of the property given the existing utility easements on the site, and the special exception will not adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial/research)
North: IR (Industrial/research)
South: IR (Industrial/research)
East: MC-1 (Multiple Commercial) & CS (Commercial Service)
West: IR (Industrial/research) & PD-5 (Planned Development)

Land Use:

The subject site is undeveloped. The areas to the north and east are undeveloped; the area to the west is developed with retail and automobile service uses; and the area to the south is developed with industrial 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 for a special exception to the landscape regulations focuses on constructing and maintaining a motor vehicle fueling station/convenience-store use/structure, and not fully meet the landscape regulations, more specifically, to substitute the required large trees for small trees along Shiloh Road.
- 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 Chief Arborist's memo states the following with regard to "request":
 - The applicant requests a special exception to the landscape regulations in Article X. Specifically, the applicant requests approval of an alternate landscape plan to provide small trees (Silver Texas Mountain Laurel) along Shiloh Road in the parkway as required street trees.
- The Chief Arborist's memo states the following with regard to "provision":
 - The alternate landscape plan provides all Article X landscape requirements with the exceptions noted below. Irrigation provisions are sufficient to maintain the plants in a healthy growing condition.
- The Chief Arborist's memo states the following with regard to "deficiencies":
 - The Article X landscape ordinance requires large street trees to be provided at a ratio of 1 per 50 linear feet of street frontage and planted within 30 feet of the street curb (10.125(b)(4)). The plan provides for the required number of trees, but they are a small species (less than 30' in height).
- The Chief Arborist recommends approval of the alternative landscape plan because strict compliance with the Article X regulations for large street trees will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring properties.
- 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 alternate landscape plan as a condition to the request, the site would be permitted to provide small trees along Shiloh Road in the parkway as required street trees.

Timeline:

- March 15, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 15, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- May 15, 2018: 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 May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th 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.

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

June 8, 2018 The City of Dallas Chief Arborist submitted a memo regarding this request.

BOARD OF ADJUSTMENT ACTION: June 19, 2018

APPEARING IN FAVOR: William Lotz, 1430 W. Peachree Street, Atlanta, GA

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move that the Board of Adjustment, in Appeal No. BDA 178-066, on application of Andrew Boshears, represented by Greenberg Farrow, **grant** the request of this applicant for a special exception to the landscaping requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that (1) strict compliance with the requirements of the article will unreasonable 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.

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: **Narey**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-067(OA)

BUILDING OFFICIAL'S REPORT: Application of Kevin Walsh for special exceptions to the fence standards regulations at 4116 Walnut Hill Lane. This property is more fully described as Lot 6, Block 2/6147, and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct/maintain a 9 foot high fence in a required front yard, which will require a 5 foot special exception to the fence standards regulations, and to construct/maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations.

LOCATION: 4116 Walnut Hill Lane

APPLICANT: Kevin Walsh

REQUESTS:

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

1. A request for a special exception to the fence standards regulations related to height of 5' is made to maintain an 8' 3" – 9' high board-on-board wood fence in the one of the site's two required front yards (Ontario Lane); and
2. A request for special exception to the fence standards regulations related to fence materials is made to maintain a fence with panels with surface areas that are less than 50 percent open less than 5' from the front lot line are made to maintain the aforementioned 8' 3" – 9' high board-on-board wood fence along Ontario Lane located less than 5' from these front lot lines.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 145-122, Property at 4106 Walnut Hill Lane (adjacent to the subject site) On December 14, 2015, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations to construct and maintain an 8' 6" high board-on-board wood fence in one of the site's two required front yards (Lakemont Drive) on a site that is developed with a single-family home.

GENERAL FACTS/STAFF ANALYSIS:

- The requests for special exceptions to the fence standard regulations are twofold. A special exception to the fence standards regulations related to height of 4' is to maintain an 8' 3" – 9' high solid board-on-board wood fence in one of the site's two required front yards (Ontario Lane). And a special exception to the fence standard regulations related to a fence with panels with surface areas less than 50 percent open is made to maintain an 8' 3" – 9' high solid board-on-board wood fence located on Ontario Lane's front lot line (or less than 5' from this front lot line).
- The subject site is zoned R-10(A).
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is located at the southwest corner of Walnut Hill Lane and Ontario Lane. Regardless of how the home on the site is oriented to front northward to Walnut Hill Lane and to side eastward onto Ontario Drive, the site has two required front yards. The site has a 50' required front yard along Walnut Hill Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district, and a 30' required front yard along Ontario Drive, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where an 8' 3" – 9' high board-on-board wood fence would be allowed by right. But the site's Ontario Lane frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback

established by the lots developed with single family homes south of the site that front/are oriented eastward towards Ontario Lane.

- No part of the application is made to address any fence in the site's Walnut Hill Lane required front yard.
- The applicant has submitted a site plan and elevation of the proposal Ontario Lane with fence panels having a surface area that is less than 50 percent open and located less than 5' from this front lot line.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 83' in length parallel to the Ontario Lane, and approximately 30' perpendicular to Ontario Lane on the north and south sides of the site in this front yard setback.
 - The proposal is represented as being located approximately on the Ontario Lane front property line. (The distance between the fence and the pavement line is approximately 11').
- The existing fence is located across from one single family home, a property that has an approximately 8' high solid wood fence in its front yard setback along Ontario Lane.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area and noted several fences that appeared to be above 4' in height and located in a front yard setback. These similar fences are located on the properties directly west and east of the subject site. (Note that the fence to the west appears to be a result of an approved fence special exception request in 2015; the fence to the east has no recorded BDA history).
- As of June 8th, no letters in opposition have been submitted, and 8 letters have been submitted in support.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height over 4' in the front yard setback and related to a fence with panels with surface areas less than 50 percent open less than 5' from the front lot line will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

March 23, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 15, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

May 15, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th 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 30, 2018: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: June 19, 2018

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Narey**

I move that the Board of Adjustment **grant** the following application 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, as amended, and is consistent with the general purpose and intent of the Code, as applicable, to wit:

BDA 178-067 – Application of Kevin Walsh to construct and/or maintain a nine-foot high fence having less than 50 percent open surface area as a special exception to fence standards regulations contained in the Dallas Development Code, as amended, is **granted**, subject to the following condition:

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

SECONDED: Nelson

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-047(OA)

BUILDING OFFICIAL’S REPORT: Application of Tricolor Auto Group, represented by Laura Castillo, for special exceptions to the sign regulations at 12000 E. Northwest Highway. This property is more fully described as Tract 12, Block 3/6583 and is zoned MC-3, which limits the number of detached signs on a premise to one per street frontage other than expressways and limits the setback of a detached sign on a premise. The applicant proposes to construct and/or maintain one additional detached premise sign, which will require a special exception to the sign regulations, and to locate and maintain a detached premise sign in a required setback, which will require up to a 10% setback special exception to the sign regulations.

LOCATION: 12000 E. Northwest Highway

APPLICANT: Tricolor Auto Group
Represented by Laura Castillo and Maxwell Fisher

REQUEST:

The following requests have been made on a site that is being developed with a “vehicle display, sales, or service” use:

1. A request for special exception to the sign regulations related to the setbacks is made to construct and maintain a 35’ high detached premise sign to be located 50’ away or 10 percent into the required 55’ setback; and
2. A request for special exception to the sign regulations is made to construct and maintain an additional detached premise sign.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR A DETACHED PREMISE SIGN OF UP TO TEN PERCENT OF THE SETBACK AREA:

Section 51A-7.703(d)(1) of the Dallas Development Code states that the Board of Adjustment may, in specific cases and subject to appropriate conditions, permit for detached premise signs of up to 10 percent of the setback effective area, and height requirements established by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

Section 51A-7.703(d)(2) of the Dallas Development Code states that the Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

STAFF RECOMMENDATION (detached premise sign of up to ten percent of the setback):

Denial

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the June 5th staff review team meeting that the applicant had not substantiated that strict compliance with the requirement of the sign regulations (in this case, the site's being limited to a 35' high detached premise sign to be located 55' from the property line) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

STAFF RECOMMENDATION (additional detached sign):

Denial

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the June 5th staff review team meeting that that the applicant had not substantiated that strict compliance with the requirement of the sign regulations (in this case, the site's Northwest Highway frontage being limited to one sign) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

BACKGROUND INFORMATION:

Zoning:

Site: MC-3 (Multiple Commercial)
North: CS (Commercial Service) & CR (Community Retail)
South: MC-3 (Multiple Commercial) & R-7 (Single family district 7,500 square-foot)
East: MC-3 ((Multiple Commercial) & RR (General Office and Regional Retail)
West: RR (General Office and Regional Retail) & & R-7 (Single family district 7,500 square-foot)

Land Use:

The site is currently developed with a “vehicle display, sales, or service” use. The area to the north is developed with retail and a public park; the area to the west and east are developed with retail; and the area to the south is developed with a vacant lot and single family residential lots.

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 (detached premise sign of up to ten percent of the setback):

- The request for a special exception to the sign regulations related to the setbacks focuses on constructing and maintaining a 35’ high detached premise sign to be located 50’ away or 10 percent into the required 55’ setback on a site developed with a “vehicle display, sales, or service” use.
- Section 51A-7.304(c) (1) (B) (2) of the Dallas Development Code requires a 35’ high detached premise sign to be located 55’ from the property line.
- A sign elevation denoting the proposed detached non-monument new sign has been submitted.
- The submitted site plan and elevation represents a 35’ high detached premise sign that is located 50 from the property line. Hence, a request for a special exception in order to locate this 35’ high detached premise sign 10 percent into the required 55’ setback.
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to 35’ high detached premise sign to be located 55’ from the property line) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- If the Board were to grant this request and impose the submitted site plan and elevation as a condition, the sign on the site would be held to features as shown on

these documents, which in this case is to allow a 35' high detached premise sign to be located 50' away or 10 percent into the required 55' setback on a site developed with a car and service dealership.

GENERAL FACTS/STAFF ANALYSIS (additional detached sign):

- The request for a special exception to the sign regulations focuses on locating and maintaining an additional sign on a site being developed with a “vehicle display, sales, or service” use.
- Section 51A-7.304(b) (4) of the Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways.
- The submitted site plan indicates the location of two detached non-monument signs, (represented as “proposed new sign” and “existing sign”) on the site’s Northwest Highway frontage, hence this request for a special exception to the sign regulations for an additional detached sign.
- A sign elevation denoting the “proposed new sign” detached non-monument sign has been submitted.
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign along the street frontage) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- If the Board were to approve the request for a special exception to the sign regulations, the board may consider imposing a condition that the applicant complies with the submitted site plan and sign elevation.

Timeline:

February 22, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 11, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 13, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 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.

- May 2, 2018: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- May 8, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: The Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.
- May 11, 2018: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment B). Note that this information was not factored into the staff recommendation since it was submitted after the May 8th staff review team meeting.
- May 22, 2018: The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action on this application until their next public hearing to be held on June 19, 2018.
- June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.
- June 8, 2018: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment C). Note that this information was not factored into the

staff recommendation since it was submitted after the June 6th staff review team meeting.

BOARD OF ADJUSTMENT ACTION: June 19, 2018

APPEARING IN FAVOR: Maxwell Fisher, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Mark Gallas, 11844 E. Northwest Hwy., Dallas, TX

MOTION #1: Sibley

I move that the Board of Adjustment, in Appeal No. BDA 178-047, on application of Laura Castillo, **deny** the special exception requested by this applicant to construct and maintain an additional detached premise sign with prejudice, because our evaluation of the property and the testimony shows that strict compliance with the requirement of the sign regulations will NOT result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

SECONDED: Narey

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Sibley

I move that the Board of Adjustment, in Appeal No. BDA 178-047, on application of Laura Castillo, **deny** the special exception requested by this applicant to construct and maintain a 35-foot high detached premise sign to be located 10 percent into the required setback with prejudice, because our evaluation of the property and the testimony shows that strict compliance with the requirement of the sign regulations will NOT result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

SECONDED: Jones

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-054(SL)

BUILDING OFFICIAL’S REPORT: Application of Nick Flaherty, represented by Brad Williams of Winstead, to appeal the decision of the administrative official at 10261 E. Technology Boulevard. This property is more fully described as Lot 1.5, Block C/6499, and is zoned IR, which requires compliance with the IR district use regulations. The applicant proposes to appeal the decision of an administrative official.

LOCATION: 10261 E. Technology Boulevard.

APPLICANT: Nick Flaherty
Represented by Brad Williams of Winstead

REQUEST:

A request is made to appeal the decision of the administrative official, more specifically, the February 27, 2018 use determination by the Chief Planner, on a site developed with, according to DCAD, a “theme restaurant”.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov’t Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

BACKGROUND INFORMATION:

Zoning:

- Site: IR (Industrial/research)
- North: MU-3 (Mixed Use)
- South: IR (Industrial/research)
- East: IR (Industrial/research)
- West: IR (Industrial/research)

Land Use:

The subject site is developed with, according to DCAD, a “theme restaurant”. The areas to the north and east and west are developed with retail uses; and the areas to the south and west are undeveloped.

Zoning/BDA History:

- 1. Z178-240, Property at 10261 E. Technology Boulevard (the subject site) A request for a zoning change from property zoned IR to CS has been filed and is tentatively scheduled to be heard by the City Plan Commission on July 19, 2018.

GENERAL FACTS/STAFF ANALYSIS:

- The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

Timeline:

- March 13, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

- May 15, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- May 15, 2018: The Board Administrator emailed the applicant’s representative the following information:
 - an attachment that provided the appeal date and panel that will consider the appeal; the May 30th deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of appeal); and the June 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

- June 6, 2018: The applicant’s representative submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

June 8, 2018: The applicant's representative submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: June 19, 2018

APPEARING IN FAVOR: Brad Williams, 2728 N. Harwood St., Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: **Narey**

I move that the Board of Adjustment in Appeal No. BDA 178-054, hold this matter under advisement until September 18, 2018.

SECONDED: **Sibley**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-073(OA)

BUILDING OFFICIAL’S REPORT: Application of Blake Byrd of Tatum Brown Custom Homes, represented by Blake Byrd, for a variance to the front yard setback regulations, and for special exceptions to the fence standards and visual obstruction regulations at 5333 Deloache Avenue. This property is more fully described as Lot 16, Block 5/5595, and is zoned R-1ac(A), which requires a front yard setback of 40 feet, limits the height of a fence in the front yard to 4 feet, and requires a 20-foot visibility triangle at driveway approaches and a 45-foot visibility triangle at street intersections. The applicant proposes to construct/maintain a structure and provide a 7 foot front yard setback, which will require a 33 foot variance to the front yard setback regulations, to construct/maintain a 6 foot 6 inch high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence standards regulations, and to locate/maintain items in required visibility triangles at driveway approaches and at a street intersection, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5333 Deloache Avenue

APPLICANT: Blake Byrd of Tatum Brown Custom Homes
Represented by Blake Byrd

REQUESTS:

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

1. A variance to the front yard setback regulations of 33’ is made to construct/maintain a fountain structure to be located 7’ from the front property line or 33’ into this 40’ front yard setback;
2. A special exception to the fence standards related to height of 2’ 6” is made to construct/maintain a 6’ high open combination steel rod/stone fence with 6’ 6” high brick columns, and steel rod swinging gates in the site’s required front yard;
3. Special exceptions to the visual obstruction regulations are made to construct and maintain:
 - a) portions of the aforementioned 6’ high open combination steel rod/stone fence with 6’ 6” high brick columns, and a steel rod swinging gate in the two 20’ visibility triangles on both sides of the north driveway into the site on Alva Court; and
 - b) portions of the aforementioned 6’ high open combination steel rod/stone fence with 6’ 6” high brick columns in the 45’ visibility triangle at the intersection of Deloache Avenue and Alva Court.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d) (3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION:

Denial.

Rationale:

- Staff concluded that the applicant had not substantiated how the variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-1ac(A) zoning district.

STAFF RECOMMENDATION (fence standards):

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

STAFF RECOMMENDATION (visual obstruction special exceptions 20' visibility triangles at the driveway):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the request.
- Staff concluded that the request for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the item located in the visibility triangles do not constitute a traffic hazard.

STAFF RECOMMENDATION (visual obstruction special exceptions 45' visibility triangle at intersection of Alva Court and Deloache Avenue):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the request commenting that: 1) The property proposes a visibility improvement to intersection leaving a 30' by 30' visibility triangle; 2) The intersection effectively functions as a T-Intersection; and 3) The background traffic is generally limited to 9 homes.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA056-003, Property at 9423 Alva Court (the lot north to the subject site)
On October 18, 2005, the Board of Adjustment Panel A granted requests for a special exception to the fence regulations of 3' and for special exceptions to the visual obstruction regulations and imposed the following condition: Compliance with submitted revised site plan and revised fence elevation is required.
The case report stated the special exception to the fence standards was made to construct and maintain a 4' 8" high open metal fence (with an 18" brick base), 5' high brick columns, two 7' high arched entry gates with 6' high brick entry columns; and that the special exceptions to the visibility obstruction regulations were made to construct and maintain the fence and columns as described above in four, 20'-visibility triangles at the two drive approaches to the site on Alva Court.

2. BDA178-041, Property at 9434 Alva Court (the lot northeast to the subject site)
On May 21, 2018, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 8' 4". The board imposed the following condition: compliance with the submitted site/landscape plan is required.
The case report stated that the request was made to construct 9' high columns, and two 8' high entry gates one of which has 12' 4' high entry gate columns and an 8' high open wrought iron fence.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- The request for a variance to the front yard setback regulations of 33' focuses on constructing and maintaining a fountain structure to be located 7' from the front property line or 33' into this 40' front yard setback on a site that is currently being developed with a single family home.
- The subject site is zoned R-1ac (A) which requires a 40' front yard setback.

- The subject site is located at the northwest corner of Deloache Avenue and Alva Court. This site has one front yard setback on Alva Court.
- The submitted plan represents that a fountain structure is proposed to be located as close as 7' from the site's front property line (or 33' into the 40' front yard setback).
- The following additional information was gleaned from the submitted site plan and elevation:
 - The fountain structure is represented as being approximately 55' in length parallel to Alva Court.
 - The fountain structure is represented as being located approximately 7'- 21' from the property line.
 - The fountain structure reaches approximately a maximum height of 5' 5'.
- The subject site is flat, rectangular in shape, and according to the application, is 0.947 acres (or approximately 41,251 square feet) in area. The site is zoned R-1 ac (A) where the typical lot size is 43,560 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) zoning classification.
- If the Board were to grant this request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which is a fountain structure to be located 7' from the site's front property line or 33' into the required 40' front yard setback.

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- The request for a special exception to the fence standards related to height of 2' 6" focuses on constructing/maintaining a 6' high open combination steel rod/stone fence with 6' 6" high brick columns, and steel rod swinging gates in the site's required front yard on a site being developed with a single-family home.
- The subject site is zoned R-1 AC (A) which requires a 40' front yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is located at the northwest corner of Deloache Avenue and Alva Court. The site has one front yard setback on Alva Court.

- The applicant submitted site plan and a site plan/elevation representing the proposed fences in the front yard setback with notations indicating that the proposal reaches a maximum height of 6' 6".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 164' in length parallel to Alva Court and approximately 40' perpendicular to Alva Court on the north and south sides of the site in this front yard setback.
 - The proposal is represented as being located approximately at the front property line or approximately 12' – 14' from the pavement line.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area and noted several other fences that appeared to be above 4' in height along Alva Court and Deloache Ave located in front yard setback, some of which have recorded BDA history (see the Zoning/BDA History section of this case report for details, one that does not.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to fence height of 6' 6" will not adversely affect neighboring property.
- As of June 8th, no letters have been submitted in support of or in opposition to this request.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 2' 6" in height to be located in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exception driveways):

- These requests for special exceptions to the visual obstruction regulations focus on constructing/maintaining portions of a 6' high open combination steel rod/stone fence with 6' 6" high brick columns, and a steel rod swinging gate in the two 20' visibility triangles on both sides of the north driveway into the site on Alva Court.
- The Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20-foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant is requesting for special exceptions to the visual obstruction regulations to the required two 20-foot visibility triangles on both sides of the north driveway into the site on Alva Court.
- The applicant submitted site plan and a site plan/elevation indicating portions of a 6' high open combination steel rod/stone fence with 6' 6" high brick columns, and steel rod swinging gate located in the two 20' visibility triangles on both sides of the north driveway into the site on Alva Court.

- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations, to locate and maintain portions of a 6’ high open combination steel rod/stone fence with 6’ 6” high brick columns, and steel rod swinging gate in the two 20’ visibility triangles on both sides of the north driveway into the site on Alva Court does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in two 20’ visibility triangles on both sides of the north driveway into the site on Alva Court to that what is shown on these documents – 6’ high open combination steel rod/stone fence with 6’ 6” high brick columns, and a steel rod swinging gate.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions 45’ visibility triangle):

- This request for special exception to the visual obstruction regulations focuses on locating and maintaining a 6’ high open combination steel rod/stone fence with 6’ 6” high brick columns in the 45’ visibility triangle at the northwest corner of Deloache Avenue and Alva Court on a site that is currently being developed with a single-family home.
- Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20-foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The subject site is zoned R-1 AC (A) which requires a 45-foot visibility triangle at the intersection of two streets.
- A site plan and an elevation have been submitted indicating a 6’ high open combination steel rod/stone fence with 6’ 6” high brick columns located in the 45’ visibility triangle at the intersection of Deloache Avenue and Alva Court.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing how granting this request to locate and maintain a 6’ high open combination steel rod/stone fence with 6’ 6” high brick columns in the 45’ visibility triangle at the intersection of Deloache Avenue and Alva Court does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the item to be located and maintained in the 45’ intersection visibility triangle to that what is shown on these documents – a 6’ high open combination steel rod/stone fence with 6’ 6” high brick columns.

Timeline:

- April 17, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 15, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- May 17, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standards that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- June 4, 2018: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official’s report to the Board Administrator (see Attachment A).
- June 4, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.
- June 7, 2018 The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.

BOARD OF ADJUSTMENT ACTION: June 19, 2018

APPEARING IN FAVOR: Blake Byrd, 1528 Slocum St., Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: **Sibley**

I move that the Board of Adjustment suspend the rule to accept more than 5 pages on Appeal No. BDA 178-073.

SECONDED: **Jones**

AYES: 4 – Schulte, Nelson, Sibley, Jones, Narey (stepped out)

NAYS: 0

MOTION PASSED: 4 – 0

MOTION: **Schulte**

I move that the Board of Adjustment in Appeal No. BDA 178-073 hold this matter under advisement until August 21, 2018.

SECONDED: **Jones**

AYES: 5 – Schulte, Nelson, Sibley, Jones, Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Jones**

I move to adjourn this meeting.

SECONDED: **Sibley**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

1:45 P. M.: Board Meeting adjourned for **June 19, 2018**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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