

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, NOVEMBER 13, 2017**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member, Ryan Behring, regular member and Nicholas Brooks, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member, Ryan Behring, regular member and Nicholas Brooks, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director of Sustainable Development and Construction, Steve Long, Board Administrator, Jennifer Munoz, Senior Planner, Kanesia Williams, Asst. City Atty., Todd Duerksen, Dev. Code Specialist, Lloyd Denman, Asst. Director, Engineering, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: David Cossum, Director of Sustainable Development and Construction, Neva Dean, Asst. Director of Sustainable Development and Construction, Steve Long, Board Administrator, Jennifer Munoz, Senior Planner, Kanesia Williams, Asst. City Atty., Todd Duerksen, Dev. Code Specialist, Lloyd Denman, Asst. Director, Engineering, and Trena Law, Board Secretary

\*\*\*\*\*

**1:10 P.M.** The Board of Adjustment staff conducted a briefing and Public Hearing on the Board of Adjustment's **November 13, 2017** 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, October 16, 2017 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2017**

MOTION: None

The minutes were approved without a formal vote.

\*\*\*\*\*

**FILE NUMBER:** BDA167-116(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Roger Albright for a special exception to the off-street parking regulations at 6770 Abrams Road. This property is more fully described as Lot 1A, Block 1/5435, and is zoned CR, which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for a restaurant without drive-in or drive-through service use, office use, medical clinic or ambulatory surgical center use, personal service use, dry cleaner or laundry store use, general merchandise or food store 3500 square feet or less use, and theater use, and provide 664 of the required 781 parking spaces, which will require a 117 space special exception to the off-street parking regulations.

**LOCATION:** 6770 Abrams Road

**APPLICANT:** Roger Albright

**REQUEST:**

A request for a special exception to the off-street parking regulations of 117 spaces is made to transition uses that are/were within an existing shopping center (Creekside Shopping Center) that has approximately 72,000 square feet currently being remodeled (but not expanded), with office, medical clinic or ambulatory surgical center, restaurant without drive-in or drive through service, personal service, dry cleaner or laundry store, general merchandise or foot store 3,500 square feet or less, and theater uses, and to provide 664 (or 85 percent) of the 781 required off-street parking spaces on the subject site.

**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 117 spaces shall automatically and immediately terminate if and when the restaurant without drive-in or drive-through service use, office use, medical clinic or ambulatory surgical center use, personal service use, dry cleaner or laundry store use, general merchandise or food store 3500 square feet or less use, and theater use that are changed or discontinued.

Rationale:

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

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community retail)  
North: PD 65 (Planned Development)  
South: R-7.5(A) (Single family residential 7,500 square feet)  
East: CR (Community retail)  
West: CR (Community retail)

**Land Use:**

The subject site is developed with a shopping center use much of which is currently being remodeled (Creekside Shopping Center). The area to the north is undeveloped; and the areas to the south, east and west are developed with retail uses.

**Zoning/BDA History:**

- |  |  |
|--|--|
| <ol style="list-style-type: none"><li>1. BDA023-125, Property at 6770 Abrams Road (the subject site)</li></ol> | <p>On September 15, 2003, the Board of Adjustment Panel C granted a variance to the height regulations of 39' and imposed the following conditions: 1) Compliance with the submitted site plan is required; and 2) Compliance with a revised elevation to be</p> |
|--|--|

submitted to the Board Administrator that shows installation of a flush mount antenna is required.

The case report stated the request was made to construct and maintain a 65' high cellular monopole tower on a site developed with retail uses.

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

- This request for a special exception to the off-street parking regulations of 117 spaces focuses on transitioning uses that are/were within an existing shopping center (Creekside Shopping Center) that has approximately 72,000 square feet currently being remodeled (but not expanded), with office, medical clinic or ambulatory surgical center, restaurant without drive-in or drive through service, personal service, dry cleaner or laundry store, general merchandise or foot store 3,500 square feet or less, and theater uses, and providing 664 (or 85 percent) of the 781 required off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirements:
  - Restaurant without drive-in or drive through service: As a main use, 1 space per 100 square feet of floor area. As a limited or accessory use, 1 space per 200 square feet of floor area.
  - Office use: 1 space per 333 square feet of floor area.
  - Office Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area.
  - Personal service: 1 space per 200 square feet of floor area.
  - Dry cleaner or laundry store: 1 space per 200 square feet of floor area.
  - General merchandise or foot store 3,500 square feet or less: 1 space per 200 square feet of floor area.
  - Theater: 1 space per 28 square feet of seating area.
- The application states among other things that the submitted professional engineer parking study shows that the uses within the center could support not only the requested 117 space reduction request but a 182 space reduction.
- The Sustainable Development and Construction Department Assistant Director of Engineering has submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the restaurant without drive-in or drive through service, office, medical clinic or ambulatory surgical center, personal service, dry cleaner or laundry store, general merchandise or foot store 3,500 square feet or less, and theater uses on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 117 spaces (or 15 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 117 spaces shall automatically and immediately terminate if and when

the restaurant without drive-in or drive through service, office, medical clinic or ambulatory surgical center, personal service, dry cleaner or laundry store, general merchandise or foot store 3,500 square feet or less, and theater uses are changed or discontinued, the applicant could lease the shopping center with these uses, and provide 664 (or 85 percent) of the 781 required off-street parking spaces.

**Timeline:**

- August 21, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- October 9, 2017: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the October 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- October 31, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.
- November 1, 2017: The Sustainable Development and Construction Department Assistant Director of Engineering has submitted a review comment sheet marked “Has no objections”.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2017**

**APPEARING IN FAVOR:** Roger Albright, 3301 Elm Street, Dallas, TX  
Cory McCord, 6904 Blake Dr., Arlington, TX  
Christy Lambeth, 400 S. Houston St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: David Cossum, Director, 1500 Marilla St., Dallas, TX

MOTION: **Agnich**

I move that the Board of Adjustment in Appeal No. **BDA 167-116** hold this matter under advisement until **December 11, 2017**.

SECONDED: **Brooks**

AYES: 5 – Richardson, Gambow, Agnich, Behring, Brooks

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

\*\*\*\*\*

FILE NUMBER: BDA167-130(SL)

**BUILDING OFFICIAL’S REPORT:** Application of John Oehlerts of JDS Design for a special exception to the off-street parking regulations at 1125 N. Canterbury Court. This property is more fully described as Lot 9B, Block 13/3800, and is zoned CD 13, which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a residential structure for a single family use and provide 0 of the required 1 parking spaces, which will require a 1 space special exception to the off-street parking regulations.

LOCATION: 1125 N. Canterbury Court

APPLICANT: John Oehlerts of JDS Design

**November 13, 2017 Public Hearing Notes:**

- The Board Administrator circulated the applicant’s revised site plan to the Board members at the briefing.

**REQUEST:**

A request for a special exception to the off-street parking regulations of 1 space is made to maintain the existing single family use/structure where the original attached garage was recently transitioned to living space and where the existing gravel driveway is proposed to be relocated, and not provide the 1 required parking space for the single family use on a site.

**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 conditions:

- The special exception shall automatically and immediately terminate if and when the single family use on the property is changed or discontinued.
- Compliance with a revised site plan is required to be submitted to the Board that removes the gate swing path towards the street shown on the submitted site plan.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to this request with the condition that the applicant remove the gate swing path towards the street as shown on his submitted site plan since the proximity of the gate swing to the street will adversely affect neighboring properties by creating a traffic hazard due to blocking the travel lane while waiting for the gate to open.
- The applicant substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required since the parking “reduction” request of 1 space is only made on the fact that the City does not recognize the location of two parking spaces denoted on the submitted site plan as spaces to fulfill the required off-street parking requirement because of their location in the required front yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 13 (Subarea 1) (Conservation District)  
North: CD 13 (Subarea 3) (Conservation District)  
South: CD 13 (Subarea 1) (Conservation District)  
East: CD 13 (Subarea 1) (Conservation District)  
West: CD 13 (Subarea 1) (Conservation District)

**Land Use:**

The subject site is developed with a single family home structure/use. 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 (parking special exception):**

- This request focuses on maintaining an existing single family use/structure where the original attached garage was recently transitioned to living space and where the existing gravel driveway is proposed to be relocated, and not providing the 1 required parking space for the single family use on a site.
- The Dallas Development Code requires the following off-street parking requirement:
  - Single family use: one space in R-7.5(A), R-5(A), and TH districts; two spaces in all other districts. No handicapped parking is required.
- The subject site is zoned CD 13 (Conservation District) that states that in general, except as otherwise provided in the ordinance, the development standards of the R-7.5(A) Single Family District apply. Because CD 13 does not provide any specific provision to off-street parking requirements, the single family use on this site requires 1 space.
- The off-street parking provisions of the Dallas Development Code states that “in residential districts except an MF-3(A) or MF-4(A) district, required off-street parking for residential uses must be located behind a required front building line.”
- The submitted site plan represents no area on the site behind the required front building line in which a parking space is located. The site plan does represent an area on the site that would accommodate an area where two vehicles could park on the site. However, the location of this area in which these vehicles could park is located in the front yard setback. As a result, the City does not recognize these spaces as spaces to fulfill the required off-street parking requirement because of their location in the required front yard setback.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” commenting: “Remove the gate swing path. The proximity of the gate swing to the street will adversely affect neighboring properties by creating a traffic hazard due to blocking the travel lane while waiting for the gate to open”.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated single family use on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 1 space would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the staff suggested conditions, the applicant would be allowed to maintain the single family use/structure on the site, and provide 0 of the 1 code required off-street parking spaces.

**Timeline:**

September 22, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 9, 2017: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the October 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

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

November 1, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting: "Remove the gate swing path. The proximity of the gate swing to the street will adversely affect neighboring properties by creating a traffic hazard due to blocking the travel lane while waiting for the gate to open".

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2017**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** Gambow

I move to grant that the Board of Adjustment grant application **BDA 167-130(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

1. The special exception of one space shall automatically and immediately terminate if and when the single family use is changed or discontinued.
2. Compliance with the submitted revised site plan is required.

**SECONDED: Agnich**

**AYES:** Richardson, Gambow, Agnich, Behring, Brooks

**NAYS:** 0 -

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

\*\*\*\*\*

**FILE NUMBER:** BDA167-131(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Ed Simons for special exceptions to the fence standards regulations at 4907 Deloache Avenue. This property is more fully described as part of Lot 5, Block 10/5583, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and maintain an 8 foot 8 inch high fence in a required front yard, which will require a 4 foot 8 inch special exception to the fence standards, and to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards.

**LOCATION:** 4907 Deloache Avenue

**APPLICANT:** Ed Simons

**REQUEST:**

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

- 1) A special exception related to fence height of 4' 8" is made to complete and maintain a fence higher than 4' in height in the front yard setback (a 5' high wrought iron fence, a 7' 6" solid wood fence, and brick columns varying in height up to 8' 8"); and,
- 2) A special exception related to fence materials is made to complete and maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned fence type) located as close as on the front lot line (or less than 5' from this front lot line).

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac (A) (Single family district 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. BDA956-217, Property at 4907 Deloache Avenue (the subject site)

On June 21, 1999, the Board of Adjustment Panel C approved staff's recommended request for a special exception to the fence height regulations of 4' subject to a revised site/elevation plan and landscape plan. Additionally, the board denied a request for a special exception to the visibility triangle regulations without prejudice.

The case report stated that the request was made to construct/maintain a 6' open metal fence, 6.5' solid masonry columns, and 8' wooden entry gate/columns.

2. BDA156-045, Property at 4926 Deloache Avenue (south of the subject site)

On May 18, 2016, the Board of Adjustment Panel B denied a request for a special exception to the fence height regulations of 6' 6" without prejudice.

The case report stated that the request was made to construct/maintain a 6' 3" high open wrought iron fence with 7' high cement plaster columns, an approximately 8' high open metal pedestrian gate with approximately 8' high cement plaster columns topped with approximately 2' high decorative urns, and an approximately 9' 6" high open metal vehicular entry gate with approximately 8' 6" high cement plaster columns topped with 2' high decorative urns.

3. BDA989-237, Property at 9426 Sunnybrook Lane (northeast of the subject site)

On June 21, 1999, the Board of Adjustment Panel C approved a request for a variance to the side yard regulations of 8 feet.

The case report stated that the request was made to construct/maintain an attached garage and provide a 2-foot side yard setback along

4. BDA94-116, Property at 4930 Park Lane (west of the subject site)

On September 27, 1994, the Board of Adjustment approved a request for a special exception to the fence height regulations of 4' subject to a site/elevation plan and landscape plan.

The case report stated that the request was made to construct/maintain an existing 8' solid wood fence along a portion of Sunnybrook Lane and an existing 6' open metal fence with brick columns at 20 feet on center along the remaining portion of Sunnybrook Lane and Park Lane.

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

- The requests for special exceptions to the fence standards focus on completing and maintaining: 1) a fence higher than 4' in height in the front yard setback (a 5' high wrought iron fence, a 7' 6" solid wood fence, and brick columns varying in height up to 8' 8"); and, 2) a fence with panels with surface areas that are less than 50

percent open (the aforementioned fence type) located as close as on the front lot line (or less than 5' from this front lot line).

- The subject site is zoned R-1ac(A).
- The site has a required front yard along Sunnybrook Lane (the shorter of the two frontages of the subject site which is always a front yard in this case).
- The site has a front yard setback along Deloache Avenue, (the longer of the two frontages which is typically considered a side yard where on this R-1ac(A) zoned property a 9' high fence could be erected by right).
- However, the site has a required front yard along Deloache Avenue in order to maintain continuity of the established front yard setback along this street frontage where lots to the east of the subject site (developed with a single family homes) “front” on Deloache Avenue.
- Note the following with regard to the request for special exceptions to the fence standards pertaining to the **height** of the proposed fence in the front yard setback:
  - The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
  - The applicant has submitted a site plan and elevation of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 8' 8”.
  - The following additional information was gleaned from the submitted site plan:
    - The proposal over 4' in height is represented as being approximately 66' along the northwest property boundary (within 5' of and up to the property line) 192' along the property line parallel to Sunnybrook Ln.; and, 260' along the south property boundary, parallel to Deloache Ave. (within 5' of and up to the property line)—all within the front yard setback.
- Note the following with regard to the request for special exception to the fence standards pertaining to the **location and materials** of the proposed fence:
  - The Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
  - With regard to the special exception to the fence standards pertaining to the location and materials of the proposed fence, the applicant has submitted a site plan and elevation of the fence with fence panels with surface areas that are less than 50 percent open (a 7' 6” solid wood fence with brick columns up to 8' 8” in height) located as close as on the front lot line (or less than 5' from this front lot line).
- The Board Senior Planner conducted a field visit of the site and surrounding area within the same block facing Sunnybrook Ln. and Deloache Ave. and noted **four**

**fences** that appeared to be above 4' in height and located in a front yard setback. Two cases had BDA history as noted in the history section of this report.

- As of November 3, 2017, no letters have been submitted in support/opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height over 4' in the front yard setback and materials/height/location of the proposed fence will not adversely affect neighboring property. No evidence was submitted with this request.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line to be constructed and maintained in the location and of the heights and materials as shown on these documents.

### **Timeline:**

September 19, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

October 12, 2017: The Board Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the October 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

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

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

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2017**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** Gambow

I move to grant that the Board of Adjustment grant application **BDA 167-131(JM)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED:** Agnich

**AYES:** 5 – Richardson, Gambow, Agnich, Behring, Brooks

**NAYS:** 0 -

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

\*\*\*\*\*

**FILE NUMBER:** BDA167-081(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Fred Brown for variances to the front and side yard setback regulations at 400 Bobbie Street. This property is more fully described as Lot 1, Block 7/7679, and is zoned R-5(A), which requires a front yard setback of 20 feet and requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a structure and provide a 10 foot front yard setback measured at the foundation, which will require a 10 foot variance to the front yard setback regulations, and provide a 2 foot 6 inch side yard setback measured at the foundation, which will require a 2 foot 6 inch variance to the side yard setback regulations.

**LOCATION:** 400 Bobbie Street

**APPLICANT:** Fred Brown

**November 13, 2017 Public Hearing Notes:**

- The Board Administrator circulated the applicant’s contour plan to the Board members at the briefing.

## **REQUESTS:**

The following requests are made on a site that is undeveloped:

1. A variance to the front yard setback regulations of 10' is made to construct and maintain a 1 ½ -story single family home structure to be located 10' from the site's front property line or 10' into this 20' front yard setback.
2. A variance to the side yard setback regulations of 2' 6" is made to construct and maintain the aforementioned structure to be located 2' 6" from the site's northern side property line or 2' 6" into this 5' required side yard setback.

## **STANDARD FOR A VARIANCE:**

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

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

## **ORIGINAL STAFF RECOMMENDATION (August 14, 2017):**

Denial

- While staff recognized that subject site was somewhat sloped and slightly irregular in shape, and that the proposed single family home with approximately 2,000 of "livable area" was commensurate with others homes in the R-5(A) zoning district (the average of 10 other properties zoned R-5(A) from the applicant was approximately 2,300 square feet), staff concluded the slope and shape of the site with slightly over 5,000 square feet in area did not preclude the applicant from developing it with a single family home/use that could comply with the front and side yard setbacks.

## **UPDATED STAFF RECOMMENDATION (September 18 and November 13, 2017):**

## Denial

- Once again, while staff recognized that subject site was somewhat sloped and slightly irregular in shape, and that the proposed single family home with approximately 2,000 of “livable area” was commensurate with others homes in the R-5(A) zoning district (the average of 10 other properties zoned R-5(A) from the applicant was approximately 2,300 square feet), staff concluded the slope and shape of the site with slightly over 5,000 square feet in area did not preclude the applicant from developing it with a single family home/use that could comply with the front and side yard setbacks.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-5(A) (Single family district 5,000 square feet)
<u>North:</u>	R-5(A) (Single family district 5,000 square feet)
<u>South:</u>	R-5(A) (Single family district 5,000 square feet)
<u>East:</u>	R-5(A) (Single family district 5,000 square feet)
<u>West:</u>	R-5(A) (Single family district 5,000 square feet)

### **Land Use:**

The subject site is undeveloped. The areas to the north, south, east, and west are undeveloped.

### **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 (front yard variance):**

- The request for a variance to the front yard setback regulations of 10’ focuses on constructing and maintaining a 1 ½ -story single family home structure with an approximately 1,500 square foot building footprint to be located 10’ from the site’s front property line or 10’ into the 20’ required front yard setback on a site that is undeveloped.
- A 20’ front yard setback is required in the R-5(A) zoning district.
- The subject site is located at the northeast corner of Canyon Street and Bobbie Street. The site has one 20’ front yard setback, two 5’ side yard setbacks, and one 5’ rear yard setback.
- The submitted site plan represents that the proposed structure is located 10’ from the front property line or 10’ into the 20’ required front yard setback.
- There are no DCAD records found for property addressed at 400 Bobbie Street.

- The subject site is somewhat sloped, slightly irregular in shape, and according to the submitted application is 0.12 acres (or approximately 5,200 square feet) in area. The site is zoned R-5(A) where lots are typically 5,000 square feet in area.
- The applicant submitted a document (Attachment A) that denoted that the “livable area” of the proposed home on the subject site was approximately 2,000 square feet, and that the average “livable area” of 10 other properties zoned R-5(A) was approximately 2,300 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-5(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-5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 10’ from the site’s front property line (or 10’ into the 20’ required front yard setback).

**GENERAL FACTS/STAFF ANALYSIS (side yard variance):**

- The request for a variance to the side yard setback regulations of 2’ 6” focuses on constructing and maintaining a 1 ½ -story single family home structure with an approximately 1,500 square foot building footprint to be located 2’ 6” from the site’s northern side property line or 2’ 6” into this 5’ required side yard setback on a site that is undeveloped.
- A 5’ side yard setback is required in the R-5(A) zoning district.
- The subject site is located at the northeast corner of Canyon Street and Bobbie Street. The site has one 20’ front yard setback, two 5’ side yard setbacks, and one 5’ rear yard setback.
- The submitted site plan represents that the proposed structure is located 2’ 6” from the northern side property line or 2’ 6” into this 5’ required side yard setback.
- There are no DCAD records found for property addressed at 400 Bobbie Street.
- The subject site is somewhat sloped, slightly irregular in shape, and according to the submitted application is 0.12 acres (or approximately 5,200 square feet) in area. The site is zoned R-5(A) where lots are typically 5,000 square feet in area.
- The applicant submitted a document (Attachment A) that denoted that the “livable area” of the proposed home on the subject site was approximately 2,000 square

feet, and that the average “livable area” of 10 other properties zoned R-5(A) was approximately 2,300 square feet.

- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side 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-5(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-5(A) zoning classification.
- If the Board were to grant the side yard variance request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 2’ 6” from the site’s northern side property line or 2’ 6” into this 5’ required side yard setback.

**Timeline:**

- April 21, 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.
- July 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 11, 2017: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 1, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

August 1, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner, the Sustainable Development and Construction Interim Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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.

August 14, 2017: The Board of Adjustment Panel C conducted a public hearing on this application. A person appeared on behalf of the applicant and submitted additional information to the Board at the public hearing (see Attachment B). The Board delayed action on this application until their next public hearing to be held on September 18, 2017.

August 21, 2017: The Board Administrator wrote the applicant a letter of the board's action; the August 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

September 5, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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.

September 18, 2017: 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 November 13, 2017. (Note that the applicant has not submitted any additional documentation to staff since the September 18, 2017 public hearing).

September 21, 2017: The Board Administrator wrote the applicant a letter of the board's action; the October 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 3<sup>rd</sup> deadline to

submit additional evidence to be incorporated into the Board's docket materials.

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

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

**BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2017**

APPEARING IN FAVOR: Brian Williams, 134666 Thunderbrook Dr.. DeSoto, TX

APPEARING IN OPPOSITION: No one

MOTION: **Foster**

I move that the Board of Adjustment, in Appeal **No. BDA 167-081**, hold this matter under advisement until **September 18, 2017**.

SECONDED: **Agnich**

AYES: 5 – Richardson, Foster, Gambow, Agnich, Lewis

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2017**

APPEARING IN FAVOR: Bryant Williams, 134666 Thunderbrook Dr.. DeSoto, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Gambow**

I move that the Board of Adjustment, in Appeal No. **BDA 167-081**, hold this matter under advisement until **October 16, 2017**.

SECONDED: **Foster**

AYES: 3 – Foster, Gambow, Agnich

NAYS: 1 – Richardson

MOTION PASSED: 3 – 1

MOTION #2: **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 167-081** reconsider the previous motion made.

SECONDED: **Gambow**

AYES: 4 – Richardson, Foster, Gambow, Agnich

NAYS: 0 –

MOTION PASSED: 4 – 0(Unanimously)

MOTION #3: **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 167-081**, hold this matter under advisement until **November 13, 2017**.

SECONDED: **Foster**

AYES: 3 –Foster, Gambow, Agnich

NAYS: 1 – Richardson

MOTION PASSED: 3 – 1

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2017**

APPEARING IN FAVOR: Joseph Wilkins, 408 W Eight St, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 167-081**, on application of Fred Brown, **deny** the variance to the front yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Gambow**

AYES: 5 – Richardson, Gambow, Agnich, Behring, Brooks

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 167-081**, on application of Fred Brown, **deny** the variance to the side yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of

the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Brooks**

**AYES: 5 – Richardson, Gambow, Agnich, Behring, Brooks**

**NAYS: 0 -**

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

\*\*\*\*\*

**FILE NUMBER:** BDA167-114(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Robert Reeves of Robert Reeves and Associates for a special exception to the landscape regulations at 6920 Bob O Link Drive. This property is more fully described as Lot 1, Block 7/2984, and is zoned R-7.5(A), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 6920 Bob O Link Drive

**APPLICANT:** Robert Reeves of Robert Reeves and Associates

**November 13, 2017 Public Hearing Notes:**

- The Board Administrator circulated the applicant’s letter requesting that the Board deny his request to the Board members at the briefing.

**REQUEST:**

A request for a special exception to the landscape regulations is made to demolish, remodel, and expand part of an existing church use/structure (Northridge Presbyterian Church), and not fully meet the landscape regulations, more specifically with regard to a revised landscape plan submitted on October 4th, to not provide the required landscape buffer strip with plant groups along the western, southern, and northern perimeters on the subject site.

**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 (October 16 and November 13, 2017)\*:**

Approval, subject to the following condition:

- Compliance with the submitted revised alternate landscape plan submitted on October 4<sup>th</sup> is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the request submitted on October 4<sup>th</sup> concluding that strict compliance with the requirements of Article X will unreasonably burden the use of the property, and that the special exception will not adversely affect/negatively impact neighboring property.

- \* While the applicant submitted a revised landscape plan to staff on November 3<sup>rd</sup> (see Attachment E), this plan was not reviewed by the City of Dallas Chief Arborist since it was submitted after the October 31<sup>st</sup> staff review team meeting.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a church use (Northridge Presbyterian Church). The areas to the north, east, south, and west are developed with single family uses.

**Zoning/BDA History:**

1. BDA989-294, Property at 6920                      On September 20, 1999, the Board of

Bob-O-Link Drive (the subject site) Adjustment Panel C granted a request for a variance to the Residential Proximity Slope height regulations of 22.5' and imposed the following condition: 1) compliance with the submitted site plan and elevations is required. The case report states that the request was made to replace an existing circa 1948 steeple/cupola roof element and to construct and maintain a gable roof on the westernmost portion of a proposed sanctuary.

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

- This request for a special exception to the landscape regulations focuses on demolishing, remodeling, and expanding part of an existing church use/structure (Northridge Presbyterian Church), and not fully meeting the landscape regulations, more specifically with regard to a revised alternate landscape plan submitted on October 4<sup>th</sup>, not providing the required landscape buffer strip with plant groups along the western, southern, and northern perimeters on the subject site on the subject site.
- 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 applicant submitted a revised alternate landscape plan in conjunction with this application (see Attachment B).
- On October 4, 2017, the City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment C).
- The Chief Arborist's October 4<sup>th</sup> memo stated the following with regard to "request" pertaining to the revised submitted alternate landscape plan submitted by the applicant on October 4<sup>th</sup>:
  - The applicant requests a special exception to the landscape regulations in Article X. Since the demolition will reduce the floor area on the property, the new addition will expand the new floor area and will require the site to comply with the Article X ordinance. The applicant requests to allow for a revised alternative landscape plan which applies a modified artificial lot area in close proximity to the structure and areas north, and to allow the use of existing perimeter buffer strips with additional plantings.
- The Chief Arborist's memo stated the following with regard to "provision" pertaining to the revised submitted alternate landscape plan submitted by the applicant on October 4<sup>th</sup>:
  - The proposed plan includes an expanded floor area which projects southward. The revised alternate landscape plan provides for four new 6" diameter live oaks to the south to provide visual buffering of the structure. The applicant will use

existing landscape areas to expand their screening of off-street parking along Bob O Link Drive and to maintain and enhance buffering on the west and east perimeters.

- The Chief Arborist's memo stated the following with regard to "deficiencies" pertaining to the revised submitted alternate landscape plan submitted by the applicant on October 4th:
  - The non-residential use is surrounded by properties in a residential district. This situation requires a minimum 10' perimeter landscape buffer strip with plant groups (10.125(b)(1) and (7)) along each applicable frontage. The western, southern, and northern perimeters indicate non-compliance with the landscape area requirement
  - The applicant is requesting that the maximum development area, shown on the plan as an artificial lot (10.122), to be the limit to required landscaping. Ordinance specifies the area should not be greater than 50% of the area of the building site. The southern field and perimeter of the property would be unchanged.

The Chief Arborist's memo stated the following with regard to "factors" pertaining to the revised submitted alternate landscape plan submitted by the applicant on October 4th:

- The applicant is removing 11 trees to the south of the existing structure for the purpose of new construction. Four 6" diameter live oaks will be placed south of the building to provide an expanding tree canopy buffer in relief.
- The existing east garden and all other trees and landscape areas are to remain. Additional landscaping will be provided to screen and buffer the parking lots to the north and west.
- All other requirements of Article X are met.
- The City of Dallas Chief Arborist recommended approval of the revised alternate landscape plan submitted on October 4<sup>th</sup> because strict compliance with the Article X regulations will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring properties.
- On November 3, 2017, the applicant submitted a revised landscape plan (see Attachment E). The City of Dallas Chief Arborist did not prepare a memo or recommendation on this plan since it was submitted after the October 31<sup>st</sup> staff review team meeting.
- 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 either the alternate landscape plan submitted on October 4<sup>th</sup> or November 3<sup>rd</sup> as a condition to the request, the site would be provided exception to the landscape regulations as shown on either one of these documents.

**Timeline:**

- August 11, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- September 12, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- September 12, 2017: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- October 2, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- October 3, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.
- October 4, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- October 4, 2017: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment C).
- October 16, 2017: The Board of Adjustment Panel C conducted a public hearing on this application. The Board Administrator circulated additional information from applicant to the Board members at the briefing (see Attachment D). The Board delayed action on this application until their next public hearing to be held on November 13, 2017.

October 20, 2017: The Board Administrator wrote the applicant a letter of the board's action; the October 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

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

November 3, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment E). Note that this information was not factored into the staff recommendation since it was submitted after the October 31<sup>st</sup> staff review team meeting.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2017**

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

APPEARING IN OPPOSITION: Mark Sefein, 6927 Bob O Link Dr., Dallas, TX

MOTION: **Gambow**

I move that the Board of Adjustment in Appeal No. **BDA 167-114** hold this matter under advisement until **November 13, 2017**.

SECONDED: **Bartos**

AYES: 4 – Richardson, Gambow, Agnich, Bartos

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2017**

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

APPEARING IN OPPOSITION: Mark Sefein, 6927 Bob O Link Dr., Dallas, TX

**MOTION: Gambow**

I move that the Board of Adjustment, in Appeal No. **BDA 167-114**, on application of Robert Reeves, **deny** the special exception requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that granting the application would not unreasonably burden the use of the property or the special exception will adversely affect neighboring property.

**SECONDED: Brooks**

**AYES:** 5 – Richardson, Gambow, Agnich, Behring, Brooks

**NAYS:** 0 -

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

\*\*\*\*\*

**FILE NUMBER:** BDA167-120(SL)

**BUILDING OFFICIAL’S REPORT:** Application of David Martin of Winstead PC for variances to the minimum and maximum front yard setback regulations at 120 W. Commerce Street. This property is more fully described as Lot 1A, Block 1/6810, and is zoned PD 714 (Subdistrict 1A), which requires a minimum front yard setback of 6 feet with at least 50 percent of the front facade at the 6 foot minimum front yard setback and requires a maximum front yard setback of 15 feet. The applicant proposes to construct and maintain a structure and provide a 176 foot front yard setback with 0 percent of the front facade at the minimum 6 foot front yard setback, which will require a 170 foot variance to the 6 foot minimum front yard setback regulations, and to construct and maintain a structure and provide a 176 foot front yard setback, which will require a 161 foot variance to the maximum 15 foot front yard setback regulations.

**LOCATION:** 120 W. Commerce Street

**APPLICANT:** David Martin of Winstead PC

**November 13, 2017 Public Hearing Notes:**

- The Board Administrator circulated the applicant’s letter requesting that the Board deny his request to the Board members at the briefing.

**REQUESTS:**

Requests for variances to the PD 714 (Subdistrict 1A) minimum and maximum front yard setback regulations are made to construct and maintain a mixed use structure/development of an unspecified square footage and height on an approximately 4-acre subject site that is partly undeveloped and partly developed with a warehouse that the application intends to demolish – more specifically:

1. Variances to the required 6’ minimum front yard setback for at least 50 percent of the front façade along West Commerce Street, Beckley Avenue, and Beatrice Street are made to construct and maintain the structure with a setback of up to 176’ away

from the one of the site's six front property lines since over 50 percent of the façade of the structure is proposed to be located as far as 176' from one of the site's six front property lines, which will require a variance of up to 170'; and

2. A variance to the required 15' maximum front yard setback along Beatrice Street is made to construct and maintain the structure with a setback of 176' away from this front property line since the structure is proposed to be located as far as 176' from one of the site's six front property lines, which will require a variance of 161'.

### **STANDARD FOR A VARIANCE:**

The Dallas Development Code Section 51A-3.102(d)(10) 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:**

Denial

Rationale:

- While staff recognized that the subject site has six front yard setbacks, an easement, and was irregular in shape, staff concluded that the applicant had not substantiated how these features preclude the applicant from developing it in a manner commensurate with the development upon other parcels of land with the same PD 714 (Subdistrict 1A) zoning, and had not substantiated how granting these variances are not needed to relieve a self-created hardship.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD 714 (Subdistrict 1A) (Planned Development)  
North: PD 714 (Subdistrict 1A) (Planned Development)  
South: PD 714 (Subdistrict 1A) (Planned Development)  
East: PD 714 (Subdistrict 1A) (Planned Development)

West: PD 714 (Subdistrict 1A) (Planned Development)

**Land Use:**

The subject site is partly undeveloped and partly developed with a warehouse that the application intends to demolish. The areas to the north, south, east, and west are a mix of undeveloped land and mostly commercial uses.

**Zoning/BDA History:**

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

**GENERAL FACTS /STAFF ANALYSIS:**

- The requests for variances to the minimum and maximum front yard setback regulations focuses on constructing and maintaining construct and maintain an mixed use structure/development of an unspecified square footage and height on an approximately 4-acre subject site that is partly undeveloped and partly developed with a warehouse that the application intends to demolish.
- The subject site is located in/zoned PD 714 (Subdistrict 1A).
- PD 714 (Subdistrict 1A) states the following with regard to “Front yard”:
  1. Minimum front yard is 6’. At least 50 percent of the front façade must be at the minimum front yard setback.
  2. Maximum front yard is 15’.
  3. An additional 20’ front yard setback is required for that portion of a structure above 45’ in height.
- The subject site has 6 street frontages and minimum and maximum front yard setback is required on each.
- The submitted site plan denotes the areas of the subject site that require variance. This plan denotes variances to the 6’ **minimum** front yard setback on the north (a 9’ variance on a portion of West Commerce Street); on the east (a 1’ - 7’ variance on Beckley Avenue); and on the southeast (a 170’ variance on east/west Beatrice Street). The site plan denotes variances to the 15’ **maximum** front yard setback on the southeast (a 161’ variance on east/west Beatrice Street). The site plan represents compliance with minimum and maximum front yard setbacks along Wink Street, Langford Street, and north/south Beatrice Street).
- The applicant has provided a document stating among other things that the subject site has hardship because of having 6 front yards and irregular shape.
- The applicant has stated in an email to the Board Administrator “it is our intent to request a postponement of our hearing until December”. (Note that the Board Administrator has advised the applicant that there is not a process for staff to administer a postponement of a board of adjustment application. If an applicant wants the board to postpone action on a complete application that has been scheduled for a hearing, the applicant can request that the board do so at the scheduled public hearing. Lastly, unless the applicant were to withdraw the

application referenced above, this application would be put on the Board of Adjustment Panel C November 13<sup>th</sup> docket where it will be called at this public hearing, and where the board can grant the request, deny the request, or delay action on the request.)

- According to DCAD records, there are “no improvements” for property addressed at 120 W. Commerce Street.
- The site is relatively flat, irregular in shape, and according to the application is approximately 3.8 acres in area. The site has six front yard setbacks.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variances to front yard setback regulations are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 714 (Subdistrict 1A) zoning classification.
  - The variances to front yard setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 714 (Subdistrict 1A) zoning classification.
- If the Board were to grant the requests for variances to the front yard setback regulations and impose the applicant’s submitted site plan as a condition, the structure in the front yard setbacks would be limited to that what is shown on this document.

**Timeline:**

- August 24, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 9, 2017: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the October 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;

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

October 26, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

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

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

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2017**

APPEARING IN FAVOR: David Martin, 2728 Harwood, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Gambow**

I move that the Board of Adjustment, in Appeal No. **BDA 167-120**, on application of David Martin of Winstead, PC, **deny** the variance to the minimum front yard setback for at least 50 percent of the front façade along West Commerce Street, Beckley Avenue, and Beatrice Street requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Agnich**

**AYES:** 5 – Richardson, Gambow, Agnich, Behring, Brooks

**NAYS:** 0 -

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

**MOTION #2: Gambow**

I move that the Board of Adjustment, in Appeal No. **BDA 167-120**, on application of David Martin of Winstead, PC, **deny** the variance to the maximum front yard setback along Beatrice Street requested by this applicant **without prejudice**, because our

evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Brooks**

**AYES: 5 – Richardson, Gambow, Agnich, Behring, Brooks**

**NAYS: 0 -**

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

\*\*\*\*\*

**FILE NUMBER:** BDA167-126(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Stefan Kesler for special exceptions to the fence standards and visual obstruction regulations at 411 Avenue G. This property is more fully described as Lot 37, Block 3/4653, and is zoned R-5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 6 foot high fence in a required front yard, which will require a 2 foot special exception to the fence standards, and to locate and maintain items in required visibility triangles, which will require special exception to the visual obstruction regulations.

**LOCATION:** 411 Avenue G

**APPLICANT:** Stefan Kesler

**REQUEST:**

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 related to height of up to 2’ is made to maintain a fence (a 5’ high wrought iron fence with a 6’ high wrought iron driveway gate) higher than 4’ in height in the site’s required front yard along Avenue G; and,
2. Requests for special exceptions to the visual obstruction regulations are made to maintain portions of the aforementioned up to 6’ high wrought iron fence and gate in the two, 20’ visibility triangles on both sides of the driveway into the site from Avenue G.

**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:**

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 (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):**

Denial

Rationale:

- The Sustainable Development Department Assistant Director of Engineering recommends that these requests be denied.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be denied because the applicant had not substantiated how the items proposed to be located in the visibility triangles do not constitute a traffic hazard.

**Zoning:**

Site: R-5(A) (Single family residential 5,000 square feet)  
North: R-5(A) (Single family residential 5,000 square feet)  
South: R-5(A) (Single family residential 5,000 square feet)  
East: R-5(A) (Single family residential 5,000 square feet)  
West: R-5(A) (Single family residential 5,000 square feet)

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS (fence standards):**

- The request for a special exception to the fence standards related to height of up to 2' focuses on maintaining a 5' high wrought iron fence with a 6' high wrought iron driveway gate on a site developed with a single family home.
- The subject site is zoned R-5(A) which requires a 20' 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 along the west line of Avenue G.
- The applicant has submitted a site plan and an elevation of the proposal/existing fence in the required front yard indicating that the proposal reaches a maximum height of 6'. (The submitted site plan shows a different location for the sliding gate and a portion of the surrounding fence when compared to what exists and what was requested with this application).
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 50' in length parallel to Avenue G and approximately 20' perpendicular to Avenue G on the north and south sides of the site in the front yard setback.
  - The proposal is represented as being located approximately along the property line parallel to the Avenue G front property line or approximately 6' from the pavement line.
- The Board Senior Planner conducted a field visit of the site and surrounding area from Sanderson Avenue to E. 11<sup>th</sup> Street (all along Avenue G) and noted **9 other fences** that appeared to be above 4' in height and located in a front yard setback. None of the properties have BDA history.
- As of November 3, 2017, no letters had been submitted in support/opposition of the request.
- The applicant has the burden of proof in establishing that the special exception to the fence standards of up to 2' will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal/existing fence exceeding 4' in height in the Avenue G required front yard to be maintained in the location and of the heights and materials as shown on these documents.

**GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):**

- The requests for special exceptions to the visual obstruction regulations focus on maintaining portions of a 5' high wrought iron fence with a 6' high wrought iron sliding driveway gate in two 20' visibility triangles at the driveway into the site on Avenue G.

- 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 submitted a site plan and an elevation representing a 5' high wrought iron fence with a 6' high wrought iron sliding driveway gate in two, 20' visibility triangles at the driveway into the site on Avenue G.
- On November 2, 2017, the Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked "Recommends that this be denied" with the following additional comment: "The proximity of the fence gate to the street will adversely affect neighboring properties by creating a traffic hazard due to blocking the travel lane while waiting for the gate to open. The portion of the gate in the visibility triangle therefore creates a traffic hazard."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain portions of a 5' high wrought iron fence with a 6' high wrought iron sliding driveway gate in two 20' visibility triangles at the driveway into the site on Avenue G do not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the revised site plan and elevation would require the items in the visibility triangles to be limited to and maintained in the locations, height and materials as shown on these documents. The existing plan identifies the fence/sliding gate in a different location than what exists or is described per the application. If the board considers approving the requests and the applicant intended to keep what exists, a revised site plan is required OR the fence would have to comply with the submitted site plan.

**Timeline:**

September 20, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

October 12, 2017: The Board Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the October 25<sup>th</sup> deadline to

submit additional evidence for staff to factor into their analysis; and the November 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;

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

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

November 2, 2017: The Sustainable Development Department Assistant Director of Engineering has submitted a review comment sheet marked "Recommends that this be denied" with the following comment: "The proximity of the fence gate to the street will adversely affect neighboring properties by creating a traffic hazard due to blocking the travel lane while waiting for the gate to open. The portion of the gate in the visibility triangle therefore creates a traffic hazard." (see Attachment A).

### **BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2017**

APPEARING IN FAVOR: Stefan Kessler, 2915 Leeshire Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

### **MOTION #1: Gambow**

I move that the Board of Adjustment, in Appeal No. **BDA 167-126(JM)**, on application of Stefan Kessler, **grant** the request of this applicant to construct and/or maintain a six-foot high fence as a special exception to the height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

### **SECONDED: Agnich**

AYES: 5 – Richardson, Gambow, Agnich, Behring, Brooks

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**MOTION #2: Gambow**

I move that the Board of Adjustment, in Appeal No. **BDA 167-126**, on application of Stefan Kessler, **grant** the request to maintain items in the visibility triangle at the drive approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. 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 and revised elevation is required.

**SECONDED: Brooks**

**AYES:** 5 – Richardson, Gambow, Agnich, Behring, Brooks

**NAYS:** 0 -

**MOTION PASSED:** 4 – 0 (unanimously)

3:46 P.M.: Break

3:56 P.M. Resumed:

\*\*\*\*\*

**MOTION: Richardson**

I move to adjourn this meeting.

**SECONDED: Agnich**

**AYES:** 5 – Richardson, Gambow, Agnich, Behring, Brooks

**NAYS:** 0 -

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

**5:07 P. M.** - Board Meeting adjourned for **November 13, 2017**

\_\_\_\_\_  
CHAIRPERSON

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

\_\_\_\_\_  
BOARD SECRETARY

\*\*\*\*\*

**Note:** For detailed information on testimony, refer to the tape retained on file in the

Department of Planning and Development.