

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, AUGUST 20, 2014**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Paula Leone, regular member, Scott Housel, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Paula Leone, regular member, Scott Housel, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator and Acting Board Secretary, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Ali Hatefi, Engineer, Donna Moorman, Chief Planner, Neva Dean, Asst. Director, and Trena Law, Board Secretary

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

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 20, 2014 docket.**

1:05 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B June 25, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2014

MOTION: Hounsel

I move approval of the **Wednesday, June 25, 2014** Board of Adjustment Public Hearing minutes.

SECONDED: Leone

AYES: 5– Reynolds, Gillespie, Leone, Hounsel, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 134-021

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel B’s favorable action on a request for a special exception to the off-street parking regulations of 15 parking spaces granted by Board of Adjustment Panel B on March 19, 2014.

LOCATION: 10501 N. Central Expressway

APPLICANT: Maxwell Fisher of Masterplan

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

- The Dallas Development Code states:
 - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application

within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.

- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
 - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a *specific finding* based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

Timeline:

- March 19, 2014: The Board of Adjustment Panel B granted a request for a special exception to the off-street parking regulations of 15 spaces and imposed the following condition to this request: The special exception of 15 off-street parking spaces automatically and immediately terminates if and when the mix of office, medical clinic or ambulatory surgical center, and financial institution with drive-in window uses that would normally need no more than 185 required off-street parking spaces is changed or discontinued (see Attach A).
- June 16, 2014: The applicant sent a letter to the Board Administrator requesting an extension of the time period in which to make application for a building permit or certificate of occupancy (see Attachment B).
- July 17, 2014: The Board Administrator emailed the applicant acknowledging his request for the Board to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days that the applicant had to do so from the March 19, 2014 favorable action (see Attachment C). The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date of the request; and 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;
 - an attachment of materials related to BDA 134-021; and
 - The Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 8, 2014: The applicant additional information to the Board Administrator regarding this request (see Attachment D).

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2014

APPEARING IN FAVOR: Willie Cothrum, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gaspard

I move approval to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel B's favorable action on a request for a special exception to the off-street parking regulations of 15 parking spaces granted by Board of Adjustment Panel B on March 19, 2014.

SECONDED: Hounsel

AYES: 5– Reynolds, Gillespie, Leone, Hounsel, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 3

The City Attorney's Office will brief on certain Dallas Development Code standards regarding applications to the Board of Adjustment and procedures of the Board of Adjustment.

***This was not an action item.**

FILE NUMBER: BDA 134-068

BUILDING OFFICIAL'S REPORT: Application of Mary Brinegar, represented by Robert Reeves and Associates, for a special exception to the landscape regulations at 8720 Garland Road. This property is more fully described as Lot 1B, Block 6/5284, and is zoned PD-287 (Tract 6a & 6B) and CR, 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: 8720 Garland Road

APPLICANT: Mary Brinegar
Represented by Robert Reeves and Associates

REQUEST:

A special exception to the landscape regulations is requested to complete and maintain a parking garage structure on the site, and not fully meet the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City’s Chief Arborist recommends approval of the applicant’s request in that: 1) strict compliance with the landscape regulations will unreasonably burden the use of the property given the fact a 20-foot wide sanitary sewer easement on the southwest side of the subject site does not allow the applicant to provide large trees required by Article X: The Landscape Regulations; and 2) the reduction of large trees, and the application of small ornamental trees within the 20’ wide buffer landscape space, will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: PD 287 (Planned Development)
North: PD 287 (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 site is currently being developed with a parking garage structure. The area to the north is developed as park (Dallas Arboretum); the areas to the east and west are developed with retail/commercial uses; the area to the south is developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on completing and maintaining a parking garage structure on the site, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site does not comply with the landscape regulations requiring a mandatory perimeter landscape buffer and mandatory buffer plant materials for the southwest perimeter of the property where there is residential adjacency.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new construction of a parking garage.
- The Chief Arborist's memo lists the following factors for consideration:
 1. A 20-foot wide sanitary sewer easement stretches the distance of the southwest portion of the garage for a full width between the structure and the property line. Dallas city engineers will not approve of large trees to be planted within the new designated easement.
 2. Dallas landscape regulations require a mandatory perimeter landscape buffer of a minimum of 10 in width and buffer plant materials to be planted within this space. At least one large tree per 50 linear feet of buffer is required with each buffer plant grouping.
 3. The remainder of the site complies with Article X.
- The City of Dallas Chief Arborist recommends approval of this request because the reduction of large trees, and the application of small ornamental trees within the 20' wide buffer landscape space, will not adversely affect neighboring property.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.

- If the Board were to grant this request and impose the submitted landscape plan as a condition to the request, the site would be provided exception from full compliance with the mandatory landscape buffer strip and buffer plant material requirements of Article X.

Timeline:

- May 29, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 15, 2014: The Interim Assistant Director of Sustainable Development and Construction acting on behalf of the Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 15, 2014: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the August 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 5, 2014: 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 Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.
- August 8, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment grant application **BDA 134-068** 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Gaspard

AYES: 5– Reynolds, Gillespie, Leone, Hounsel, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-070

BUILDING OFFICIAL’S REPORT: Application of Abdul Hafeez Khan, represented by Warren Packer, for a special exception to the fence height regulations at 4820 Northaven Road. This property is more fully described as Lot 7, Block 1/6391, and is zoned R-1/2ac(A)(NSO 1), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 13 foot 1 inch high fence, which will require a 9 foot 1 inch special exception to the fence height regulations.

LOCATION: 4820 Northaven Road

APPLICANT: Abdul Hafeez Khan
Represented by Warren Packer

REQUEST:

A request for a special exception to the fence height regulations of 9’ 1” is made to construct and maintain a 7’ high fence (4’ high open metal fence atop a 3’ high solid base) with approximately 8’ high columns and an entryway feature that includes a 12’ high vehicular and pedestrian gates with 13’ 1” high entry column finials in the site’s 75’ front yard setback on a site being developed with a single family home.

(Note that this application is adjacent to a property to the east where the same applicant and owner seeks a similar fence height special exception from Board of Adjustment Panel B on August 20th: BDA 134-071).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

- Site: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
- North: R-1/2 ac(A) (Single family district ½ acre)
- South: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
- East: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
- West: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)

Land Use:

The subject site is being developed with a single family home. The areas to the north, south, and west are developed with single family uses; the area to the east (and the subject site of BDA 134-071) is undeveloped.

Zoning/BDA History:

1. BDA 134-071, Property at 11217 Strait Lane (the lot immediately east of the subject site) On August 20, 2014, the Board of Adjustment Panel B will consider requests for special exceptions to the fence height regulations of 9' 1" to construct/maintain a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns and an entryway feature that includes 12' high vehicular and pedestrian gates with 13' 1" high entry column finials
2. BDA 001-123, Property at 4821 Northaven Road (the lot immediately north of the subject site) On December 12, 2000, the Board of Adjustment Panel A granted a request to the fence height special regulations of 4'. The board imposed the following conditions with the request: compliance with the elevation and a revised site plan that shows the location of the fence behind the shrub is required; and the retention of the approximately 8 foot high Japanese Ligustrum shrubs now existing on the property, (or its replacement with similar species) between the street curb and the proposed fence. The case report states the

request was made to construct and maintain a 6' high open wrought iron fence, a 6' chain link fence, 7' high stone columns, and two 8' high wrought iron entry gates.

3. BDA 85-145, Property at 4719 Northaven Road (two lots northwest of the subject site)

On May 14, 1985, the Board of Adjustment denied a request for a "front yard variance" of 2' 6" without prejudice. The case report states the request was made to construct a masonry fence with wrought iron gates 6' 6" in height.

4. BDA 92-001, Property at 11220 Strait Lane (two lots east of the subject site)

On February 11, 1992, the Board of Adjustment granted a request for a fence height special exception of 4' to maintain a 6' fence with 8' columns and gates, and imposed the "submitted Landscape Plan "B"" as a condition to the request.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns and an entryway feature that includes 12' high vehicular and pedestrian gates with 13' 1" high entry column finials in the site's 75' front yard setback on a site being developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and elevation of the proposal in the front yard setbacks that reaches a maximum height of 13' 1".
- The following additional information was gleaned from the submitted site plan:
 - The fence is approximately 450' in length, approximately 4' from the property line, and approximately 12' from the pavement line; the gate is approximately 12' from the property line, and approximately 20' from the pavement line.
- There are two single family homes that have direct frontage to the proposal, one of which appears to have fence in its front yard – a fence that appears to be a result of a granted fence height special exception from 2000: BDA 001-123 (see the "Zoning/BDA History" section of this case report for additional details).
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 300' east and west of the subject site) and noted no other visible fences higher than 4' in a front yard setback other than the one previously mentioned directly north of the subject site.
- As of August 11, 2014, one letter has been submitted in support of the request and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 9' 1" will not adversely affect neighboring property.

- Granting this special exception of up to 9' 1" 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 to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

June 16, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 15, 2014: The Interim Assistant Director of Sustainable Development and Construction acting on behalf of the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

July 15, 2014: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the July 30th deadline to submit additional evidence for staff to factor into their analysis; and the August 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

August 5, 2014: 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 Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

August 4, 2014: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2014

APPEARING IN FAVOR: Warren Packer, 1680 Prince William Lane, Frisco, TX

APPEARING IN OPPOSITION: Shelton Hopkins, 4707 Crooked LN, Dallas, TX
Judy Askew, 4719 Northaven Rd., Dallas, TX
Christopher Center, 4811 Northaven Rd., Dallas, TX
Kevin Bride, 4933 Mangold Cr., Dallas, TX
Bill Woodall, 4821 Northaven, Dallas, TX
Barbara Hannon, 4745 Crooked LN, Dallas, TX
Pat McBride, 4933 Mangold, Dallas, TX 7

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 134-070**, hold this matter under advisement until **October 22, 2014**.

SECONDED: Leone

AYES: 5– Reynolds, Gillespie, Leone, Hounsel, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-071

BUILDING OFFICIAL’S REPORT: Application of Abdul Khan, represented by Warren Packer, for a special exception to the fence height regulations at 11217 Strait Lane. This property is more fully described as Lot 4A, Block 1/6391, and is zoned R-1/2ac(A)(NSO 1), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 13 foot 1 inch high fence in a required front yard, which will require a 9 foot 1 inch special exception to the fence height regulations.

LOCATION: 11217 Strait Lane

**APPLICANT: Abdul Khan
Represented by Warren Packer**

REQUESTS:

Requests for special exceptions to the fence height regulations of 9' 1" are made to construct and maintain the following on a site undeveloped site:

- In the Northaven Road front yard setback: a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns in the site's 75' front yard setback.
- In the Strait Lane front yard setback: a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns and an entryway feature that includes 12' high vehicular and pedestrian gates with 13' 1" high entry column finials.

(Note that this application is adjacent to a property to the west where the same applicant and owner seeks a similar fence height special exception from Board of Adjustment Panel B on August 20th: BDA 134-070).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

Zoning:

- Site: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
- North: R-1/2 ac(A) (Single family district ½ acre)
- South: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
- East: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
- West: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)

Land Use:

The subject site is undeveloped. The areas to the north, south, and east are developed with single family uses; the area to the west (and the subject site of BDA 134-070) is being developed with a single family home.

Zoning/BDA History:

1. BDA 134-070, Property at 4820 Northaven (the lot immediately west of the subject site)

On August 20, 2014, the Board of Adjustment Panel B will consider a request for special exception to the fence height regulations of 9' 1" to construct and maintain a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns and an entryway feature that includes a 12' high vehicular and pedestrian gates with 13' 1" high entry column finials in the site's 75' front yard setback on a site being developed with a single family home

2. BDA 001-123, Property at 4821 Northaven Road (the lot immediately northwest of the subject site)

On December 12, 2000, the Board of Adjustment Panel A granted a request to the fence height special regulations of 4'. The board imposed the following conditions with the request: compliance with the elevation and a revised site plan that shows the location of the fence behind the shrub is required; and the retention of the approximately 8 foot high Japanese Ligustrum shrubs now existing on the property, (or its replacement with similar species) between the street curb and the proposed fence. The case report states the request was made to construct and maintain a 6' high open wrought iron fence, a 6' chain link fence, 7' high stone columns, and two 8' high wrought iron entry gates.

3. BDA 85-145, Property at 4719 Northaven Road (three lots northwest of the subject site)

On May 14, 1985, the Board of Adjustment denied a request for a "front yard variance" of 2' 6" without prejudice. The case report states the request was made to construct a masonry fence with wrought iron gates 6' 6" in height.

4. BDA 92-001, Property at 11220 Strait Lane (the lot immediately east of the subject site)

On February 11, 1992, the Board of Adjustment granted a request for a fence height special exception of 4' to maintain a 6' fence with 8' columns and gates, and imposed the "submitted Landscape Plan "B"" as a condition to the request.

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on constructing and maintaining the following in the two front yard setbacks for the site located at the southwest corner of Northaven Road and Strait Lane on a site being developed with a single family home:
 - in the Northaven Road front yard setback a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns; and
 - in the Strait Lane front yard setback: a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns and an entryway feature that includes 12' high vehicular and pedestrian gates with 13' 1" high entry column finials.
- 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 setbacks that reaches a maximum height of 13' 1".
- The following additional information was gleaned from the submitted site plan:
 - Along Northaven Road: The fence is approximately 150' in length, approximately 4' from the property line, and approximately 12' from the pavement line.
 - Along Strait Lane: the fence is approximately 120' in length, approximately 4' from the property line, and approximately 18' from the pavement line; the gate is approximately 12' from the property line, and approximately 24' from the pavement line.
- There is one single family home that has direct frontage to the proposal on Northaven Road and one single family home that has direct frontage to the proposal on Strait Lane, neither of which have visible fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 300' north, south, east, and west of the subject site) and noted one visible fence higher than 4' in a front yard setback: an approximately 6' high fence immediately northwest of the subject site that appears to be a result of a granted fence height special exception from 2000: BDA 001-123 (see the "Zoning/BDA History" section of this case report for additional details).
- As of August 11, 2014, no letters have been submitted in support of or in opposition to the requests.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 9' 1" will not adversely affect neighboring property.
- Granting these special exceptions of up to 9' 1" 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 setbacks to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

June 16, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 15, 2014: The Interim Assistant Director of Sustainable Development and Construction acting on behalf of the Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 15, 2014: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the July 30th deadline to submit additional evidence for staff to factor into their analysis; and the August 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

August 5, 2014: 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 Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2014

APPEARING IN FAVOR: Warren Packer, 1680 Prince William Lane, Frisco, TX

APPEARING IN OPPOSITION: Shelton Hopkins, 4707 Crooked LN, Dallas, TX
Judy Askew, 4719 Northaven Rd., Dallas, TX
Christopher Center, 4811 Northaven Rd., Dallas, TX
Kevin Bride, 4933 Mangold Cr., Dallas, TX
Bill Woodall, 4821 Northaven, Dallas, TX
Barbara Hannon, 4745 Crooked LN, Dallas, TX
Pat McBride, 4933 Mangold, Dallas, TX 7

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 134-071**, hold this matter under advisement until **October 22, 2014**.

SECONDED: Leone

AYES: 5– Reynolds, Gillespie, Leone, Hounsel, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-073

BUILDING OFFICIAL’S REPORT: Application of Robert Reeves to restore a nonconforming use at 1918 S. Beckley Avenue. This property is more fully described as Lot 4, Block 11/3602, and is zoned CR, which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming multifamily use, which will require a special exception to the nonconforming use regulations.

LOCATION: 1918 S. Beckley Avenue

APPLICANT: Robert Reeves

REQUEST:

A special exception to reinstate nonconforming use rights is requested to obtain a Certificate of Occupancy (CO) for a “multifamily” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

- Site: CR (Community Retail)
- North: CR (Community Retail)
- South: CR (Community Retail)
- East: R-7.5(A) (Single family residential 7,500 square feet)
- West: CS (Commercial Service)

Land Use:

The subject site is developed with a multifamily structure. The areas to the north and west are developed with commercial uses; the area to the south is developed with what appears to be a multifamily use; and the area to the east 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:

- This special exception request is made to restore nonconforming use rights for a nonconforming “multifamily” use that has been discontinued for six months or more, and to obtain a Certificate of Occupancy (CO) for this use.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.

The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

The nonconforming use regulations also states that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

- The subject site is zoned CR (Community Retail) – a zoning district that does not permit a “multifamily” use.
- A document has been included in the case file that states the following for the property at 1918 S. Beckley Avenue:
 1. The nonconforming use to be reinstated: multifamily.
 2. Reason the use is classified as nonconforming: zoning change (Chap. 51A).
 3. Current zoning of the property on which the use is located: CR (Chap. 51A).
 4. Date the nonconforming use was discontinued: about April 29, 2009
 5. Date that the nonconforming use became nonconforming: Feb. 4. 1987 (Chap. 51A).
 6. Previous zoning of the property on which the use is located: GR (Chap. 51)
- Building Inspection has stated that these types of special exception request originate from when an owner/officer related to the property applies for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since

the issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.

- The applicant has submitted documents that he represents show how the owners of the subject site have been attempting to sell the property as a multifamily 4-plex apartment use since the time the use became vacant in 2009.
- If the Board were to grant this request, the nonconforming “multifamily” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The “multifamily” use can obtain “conforming use” status with a change in zoning.
- The owner could develop the site with any use that is permitted by right in the site’s existing CR zoning classification.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming “multifamily” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming “alcoholic beverage establishments” use rights that were lost when the use was abandoned for a period of six months or more.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

Timeline:

- May 29, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 15, 2014: The Interim Assistant Director of Sustainable Development and Construction acting on behalf of the Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 15, 2014: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the August 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the section from the Dallas Development Code pertaining to nonconforming uses and structures; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

July 30, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

August 5, 2014: 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 Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment grant application **BDA 134-073** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD.

SECONDED: Gaspard

AYES: 5– Reynolds, Gillespie, Leone, Hounsel, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: Leone

I move to adjourn this meeting.

SECONDED: Hounsel

AYES: 5– Reynolds, Gillespie, Leone, Hounsel, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

2:10 P.M. Board Meeting adjourned for **August 20, 2014**

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.