

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, SEPTEMBER 17, 2014**

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

MEMBERS ABSENT FROM HEARING: No one

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

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

11:35 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 17, 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: SEPTEMBER 17, 2014

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA 134-080

BUILDING OFFICIAL'S REPORT: Application of Scottie Breault, represented by Michael R. Coker, for a special exception to the off-street parking regulations at 702 N. Buckner Boulevard. This property is more fully described as Lot 1, Block 5391, and is zoned CR, which requires parking to be provided. The applicant proposes to construct and maintain a structure for restaurant without drive-in or drive-through service, general merchandise or food store 3500 square feet or less, personal service, and office uses, and provide 367 of the required 471 parking spaces, which will require a 104 space special exception to the off-street parking regulations.

LOCATION: 702 N. Buckner Boulevard

APPLICANT: Scottie Breault
Represented by Michael R. Coker

REQUEST:

A request for a special exception to the off-street parking regulations of 104 spaces is made in to lease and maintain square footage/space within an existing community retail center (Lake Highlands Village) with approximately 65,000 square feet of leasable area with a certain mix of uses (restaurant without drive-in or drive through service, general merchandise or food store 3,500 square feet or less, personal service, and office), and provide 367 (or 78 percent) of the 471 required off-street parking spaces.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.

- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 104 spaces shall automatically and immediately terminate if and when the mix of restaurant without drive-in or drive through service, general merchandise or food store 3,500 square feet or less, personal service, and office uses that would normally need no more than 471 required parking spaces is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has indicated that he has no objections to the applicant's request.
- The applicant's representative has substantiated how the parking demand generated by the mix of restaurant without drive-in or drive through service, general merchandise or food store 3,500 square feet or less, personal service, and office uses 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 applicant's representative has conducted parking counts where the highest count was 145 parked spaces in the approximately 65,000 square foot center that is currently approximately 27,000 square feet unleased.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
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 an existing community retail center (Lake Highlands Village) with approximately 65,000 square feet of leasable area. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on leasing and maintaining square footage/space within an existing community retail center (Lake Highlands Village) with approximately 65,000 square feet of leasable area with a certain mix of uses (restaurant without drive-in or drive-through service, general merchandise or food store 3500 square feet or less, personal service, and office), and provide 367 (or 78 percent) of the 471 required off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirement:
 - Office use: 1 space per 333 square feet of floor area.
 - Restaurant without drive-in service use: 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
 - General merchandise or food store 3,500 square feet or less: 1 space for 200 square feet of floor area.
 - Personal service use: 1 space per 200 square feet of floor area.
- The applicant proposes to provide 367 (or 78 percent) of the required 471 off-street parking spaces in conjunction with the site being leased/maintained with a combination of the uses mentioned above, more specifically, according to the applicant's representative, leasing current vacant space and increasing available restaurant square footage by 10,000 square feet.
- The applicant's representative has conducted parking counts where the highest count was 145 in the approximately 65,000 square foot center that is currently approximately 27,000 square feet unleased.
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the applicant's request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the existing/proposed restaurant without drive-in or drive through service, general merchandise or food store 3,500 square feet or less, personal service, and office uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 104 spaces (or a 22 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 104 spaces shall automatically and immediately terminate if and when the restaurant without drive-in or drive through service, general merchandise or food store 3,500 square feet or less, personal service, and office uses are changed or discontinued, the applicant would be allowed to lease/maintain the site with these specific uses with the specified square footages, and provide 367 of the 471 code required off-street parking spaces.

Timeline:

- June 27, 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.
- August 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 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 August 27th deadline to submit additional evidence for staff to factor into their analysis; and the September 5th 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.
- September 2, 2014: 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 Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.
- September 3, 2014: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- September 3, 2014: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator on this application (see Attachment B).
- September 3, 2014: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2014

APPEARING IN FAVOR: Mike Coker, 3111 Canton St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hounsel

I move that the Board of Adjustment, in request No. **BDA 134-080**, on application Michael R Coker, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 104 spaces because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would NOT create a traffic hazard or increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 104 spaces shall automatically and immediately terminate if and when the mix of restaurant without drive-in or drive through service, general merchandise or food store 3,500 square feet or less, personal service, and office uses that would normally need no more than 471 required parking spaces is changed or discontinued.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-090

BUILDING OFFICIAL’S REPORT: Application of Jim Hardin for a special exception to the landscape regulations at 2610 Forest Lane. This property is more fully described as Lot 1A, Block 1/6593, and is zoned IR, 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: 2610 Forest Lane

APPLICANT: Jim Hardin

REQUEST:

A request for a special exception to the landscape regulations is made to complete and maintain a vehicle display, sales, or service structure/use (Toyota of Dallas), 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 revised alternate landscape plan is required.

Rationale:

- The City's Chief Arborist recommends approval of the applicant's request in that strict compliance with the landscape regulations, specifically, in this case, the street tree requirements along the I-635 frontage of the subject site, will unreasonably burden the use of the property.
- The special exception will not adversely affect neighboring property in that the applicant's plan provides for the required number of street trees along the I-635 frontage of the subject site, just not all in the required location within 30 feet of this street curb.

BACKGROUND INFORMATION:

Zoning:

Site: IR (SUP 97) (Industrial/research, Specific Use Permit for airport)
North: MU-2 (Mixed use)
South: IR (SUP 97) (Industrial/research, Specific Use Permit for airport)
East: IR (SUP 97) (Industrial/research, Specific Use Permit for airport)
West: IR (SUP 97) (Industrial/research, Specific Use Permit for airport)

Land Use:

The site is currently under development. The area to the north is developed with the LBJ Freeway; and the areas to the east, south, and west are developed with a mix of commercial/retail/office 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 constructing and maintaining a vehicle display, sales, or service structure/use (Toyota of Dallas), and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site is deficient in providing the required number of street trees within 30 feet of the street curb. The Chief Arborist states that the plan provides for 18 large trees for the Interstate 635 street frontage but where 13 are provided at a distance greater than 30' from the street curb.
- 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 B). The memo states how this request is triggered by the new construction of a vehicle sales facility.
- The Chief Arborist's memo lists the following factors for consideration:
 1. The new facility is being built along I-635 frontage and adjacent to bridge structures. The trees are set back from the bridge columns. Street trees on all other frontages are in compliance with the Landscape Regulations.
 2. The plan provides for the minimum required number of street trees.
 3. Under the parking lot tree provisions, the plan provides for a large canopy trees within 120 feet of each required parking space per ordinance. A 2012 ordinance addition for parking lot trees now states "no *parking space in excess of required parking* may be located more than 100 feet from the trunk of a large canopy trees, and the tree must be located in a landscape area of a minimum of 120 square feet." The landscape plan shows extensive areas for vehicle parking without tree canopy coverage.
 4. Under City of Dallas zoning regulations, it is reasoned a vehicle display, sales, and service use provides vehicle display and sales areas on the property. Although the area may have the appearance of a parking lot with striping and maneuvering space on an expansive paved surface, and it is used to store motor vehicles, this designated lot area is not considered to be a parking lot by the use. Areas identified as parking spaces on the plan that are not a part of the "required parking" are considered a part of the use and not as a "parking space" in excess of required parking." The expansive areas of pavement identified on the plan for vehicle display and sales are not required to provide additional tree planting locations within the lot.
 5. The previous use of the property was also for vehicle display, sales, and service.

6. Screening of off-street parking is provided for the required parking spaces near I-635, and a 6' tall screen is provided for most of the frontage along Tarna Drive. The screening of off-street parking standard states "an applicant may provide screening for all parking lots on the building site...from all adjacent public streets." Under the same reasoning for vehicle display, sales, and service use, the vehicle display sales area is not deemed a parking lot for screening although the area has the appearance and similar function to a parking lot. Therefore the screening provided for the required parking along the I-635 frontage is deemed in compliance with the design standard provisions.
- The City of Dallas Chief Arborist recommends approval of the proposed alternate revised landscape plan because street compliance with the requirements of the street tree requirements will unreasonably burden the use of the property.
 - The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
 - If the Board were to grant this request and impose the submitted revised alternate landscape plan as a condition to the request, the site would be provided exception from fully complying with providing the required number of street trees within 30 feet of the I-635 street curb.

Timeline:

- July 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.
- August 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 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 August 27th deadline to submit additional evidence for staff to factor into their analysis; and the September 5th 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 28, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

September 2, 2014: 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 Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

September 8, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Agnich

I move that the Board of Adjustment grant application **BDA 134-090** 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 revised alternate landscape plan is required.

SECONDED: Hounsel

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-085D

BUILDING OFFICIAL'S REPORT: Application of Mashari Nassar, represented by Enoch Correa, for a special exception to the fence height regulations and a special exception to the visibility obstruction regulations at 5035 Royal Lane. This property is more fully described as Lot 43, Block 5502, and is zoned R-1ac(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 and maintain an 8 foot 6 inch high fence in a required front yard, which will require a 4 foot 6 inch special exception to the fence height regulation, and to construct and maintain a single family residential fence and landscape materials in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation.

LOCATION: 5035 Royal Lane

APPLICANT: Mashari Nassar
Represented by Enoch Correa

REQUESTS:

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

1. A request for a special exception to the fence height regulations of 4' 6" is made to maintain a 6' 6" high open metal picket fence with 7' 6" high brick columns and two 7' 7" high open metal picket vehicular gates with 7' 6" high brick columns parallel and perpendicular to Royal Lane.
2. Requests for special exceptions to the visual obstruction regulations are made to maintain portions of the aforementioned fence and columns and landscape materials in four 20' visibility triangles, located on both sides of the two driveways into the site from Royal Lane.

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.

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 HEIGHT):

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

STAFF RECOMMENDATION (VISUAL OBSTRUCTION):

Approval, subject to the following conditions:

- Subject to removing the vegetation from the visibility triangle.

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has indicated that he has no objections to these requests if the staff-suggested conditions referenced above are imposed.

- The applicant has substantiated how the location of the open metal picket fence and columns in four 20' visibility triangles, located on both sides of the two driveways into the site from Royal Lane, as denoted on his submitted revised site plan, does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

- Site: R-1ac(A) (Single family district 1 acre)
- North: R-1ac(A) (Single family district 1 acre) and R-1/2ac(A) (Single family district one-half acre)
- South: R-1ac(A) (Single family district 1 acre)
- East: R-1ac(A) (Single family district 1 acre)
- West: R-1ac(A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

- | | |
|--|---|
| <p>1. BDA 134-025, Property at 10814 Crooked Creek Drive (lot abutting the subject site to the west)</p> | <p>On March 17, 2014, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 5' and imposed the submitted site plan and partial elevation as a condition to this request. The case report stated that the request was made in conjunction with constructing and maintaining a board-on-board cedar fence ranging from 7'-9' in height in one of the site's two required yards (Royal Lane) on a site developed with a single family home.</p> |
| <p>2. BDA 012-198, Property at 5000 Royal Lane (the lot immediately south of the subject site)</p> | <p>On June 25, 2002, the Board of Adjustment Panel A granted a request for a special exception to the front yard fence regulations of 8 feet, a special exception to the side yard fence regulations of 3 feet, and a special exception to the single family dwelling regulations for an additional kitchen/dwelling unit, and imposed the submitted site plans, revised floor plans, and building elevation as conditions to the requests. The case report states that the requests were made to construct a wall in the front and side yard</p> |

setbacks of 12 feet and construct a servants' quarters on property developed with a single family home.

GENERAL FACTS/STAFF ANALYSIS (FENCE HEIGHT):

- This request focuses on maintaining a 6' 6" high open metal picket fence with 7' 6" high brick columns, parallel and perpendicular to the street, and two 7' 7" high open metal picket vehicular gates with 7' 6" high brick columns, perpendicular to the street, in the required front yard on a site developed with a single family home/use.
- The Dallas Development Code states that in all residential districts, except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a revised site plan and an elevation of the proposal in the required front yard that reaches a maximum height of 7' 7".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 189' in length parallel to Royal Lane, and approximately 21' in length perpendicular to the street on the east and west sides of the site in the required front yard.
 - The proposal is represented as being located approximately 1' from the property line or about 10' from the pavement line.
- The Current Planner conducted a field visit of the site and surrounding area and noted two other visible fences above 4 feet high which appeared to be located in a front yard setback– fences with recorded BDA history.
- No home fronts the proposal.
- As of September 8th, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the submitted revised site plan and elevation would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (VISUAL OBSTRUCTION):

- This request focuses on maintaining portions of the open metal picket fence, columns, and landscape materials on both sides of the two driveways into the site from Royal Lane.
- 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 has submitted a revised site plan denoting the items to be maintained in the four 20' visibility triangles, located on both sides of the two driveways into the site from Royal Lane.
- The Sustainable Development and Construction Department Senior Engineer submitted a revised review comment sheet marked "Has no objections if certain conditions are met" with the following additional comment: "Subject to removing the vegetation from the visibility triangle."
- 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 an open metal picket fence, columns, and landscape materials on both sides of the two driveways into the site from Royal Lane does not constitute a traffic hazard.
- Granting these requests with the staff-suggested conditions imposed would require the items as described above to be limited to and maintained in the locations, height and materials as shown on these documents.

Timeline:

- June 10, 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.
- August 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 20, 2014: The Current Planner emailed the following information to the applicant:
- an attachment that provided the public hearing date and panel that will consider the application; the August 29th deadline to submit additional evidence for staff to factor into their analysis; and the September 5th 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 requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 21, 2014: The applicant contacted the Current Planner and the Building Inspection Senior Plans Examiner/Development Code Specialist to explain that the representative has misstated the fence height special exception on the appeal application as being 6' when only 4' 2½" was needed, which caused the Senior Plans Examiner/Development Code Specialist to revise his Building Official's Report.
- September 2, 2014: 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 Chief Planner, the Board Administrator, the Building Inspection Senior Plans

Examiners/Development Code Specialist, 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.

September 2, 2014: The applicant submitted a revised site plan that highlighted landscape materials in the visibility triangles.

September 3, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following additional comment: "Subject to removing all the vegetation from visibility triangle at north drive."

September 3, 2014: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator and Current Planner on this application (see Attachment A).

September 4, 2014: The Current Planner emailed the following information to the applicant and representative:

- a revised Building Official's report; and
- a review comment sheet from the Senior Engineer; and
- a site plan with annotations from the Senior Engineer that advises which landscape materials are to be removed should the Board grant the special exception to the visibility obstruction regulations with the imposed condition.

BOARD OF ADJUSTMENT ACTION: September 17, 2014

APPEARING IN FAVOR: Mashari Nassar, 5035 Royal Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment, in request No. **BDA 134-085D**, on application of Mashari Nassar, **grant** the request to maintain items in the visibility triangle as special exception to the visual obstruction regulations 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.

SECONDED: Agnich

AYES: 4 – Reynolds, Leone, Hounsel, Agnich

NAYS: 1 – Gillespie

MOTION PASSED 4 – 1

MOTION #2: Leone

I move that the Board of Adjustment, in request No. **BDA 134-085D**, on application of Mashari Nassar, **grant** the request to construct and maintain an 8-foot 6- inch high fence in the property’s front-yard as a special exception to the fence height requirements 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 elevation is required.

SECONDED: Gillespie

AYES: 5 – Reynolds, Gillespie, Leone, Housel, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

MOTION: Leone

I move to adjourn this meeting.

SECONDED: Gillespie

AYES: 5– Reynolds, Gillespie, Leone, Housel, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

1:40 P.M. Board Meeting adjourned for **September 17, 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.