

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN AUDITORIUM  
THURSDAY, FEBRUARY 20, 2014**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Larry Brannon, alternate member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Larry Brannon, alternate member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Peter Schulte, regular member and Marla Beikman, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, and Trena Law, Board Secretary

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**11:06 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 20, 2014** docket.  
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**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C December 16, 2013 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2014**

**MOTION: Richardson**

I move **approval** of the Monday, **December 16, 2013** public hearing minutes.

**SECONDED: Gaspard**

**AYES:** 5– Richardson, Coulter, Carreon, Brannon, Gaspard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 134-010

**BUILDING OFFICIAL’S REPORT:** Application of Robert Baldwin for a special exception to the fence height regulations at 4834 S. Lindhurst Avenue. This property is more fully described as Lot 2, Block 3/5531, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct/maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations.

**LOCATION:** 4834 S. Lindhurst Avenue

**APPLICANT:** Robert Baldwin

**REQUEST:**

A special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining a fence in the site’s 40’ front yard setback on a site that is developed with a single family home – a 6’ high open wrought iron picket fence with 6’ 6” high stone columns and two 8’ high arched open wrought iron entry gates with 7’ high stone columns flanked by two, approximately 6’ -6’ 6” high, approximately 14’ long curved solid stone wing walls.

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

**Zoning/BDA History:**

1. BDA 989-069, Property at 4834 S. Lindhurst Avenue (the subject site) On June 15, 2009, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' 9" and imposed the submitted site plan and partial elevation as a condition to this request. The case report stated that the request was made "to construct a fence that is 8 feet 9 inches in a required front yard."
2. BDA 078-013, Property at 10395 Strait Lane (the lot immediately east of the subject site) On December 16, 1997, the Board of Adjustment Panel C granted a request for a special exception of 3' 6" and imposed the submitted site plan and elevation plans as a condition to the request. The case report stated that the request was made to construct and maintain an open metal fence and entry gate with masonry columns in the front yards along Strait Lane and S. Lindhurst Avenue.
3. BDA 95-006, Property at 10111 Strait Lane (the lot immediately northeast of the subject site) On January 24, 1995, the Board of Adjustment granted a request for a special exception to the height regulations to allow a 5' 7" – 6' 8" high open metal fence with 6' –

4. BDA 95-071, Property at 4805 S. Lindhurst Avenue (the lot immediately northwest of the subject site)
- 7' 2" high masonry columns. The Board imposed the submitted site plan, elevation, and visibility obstruction regulations. On May 23, 1995, the Board of Adjustment denied a request for a special exception to the height regulations of 2' 6" without prejudice. The case report stated that the request was made in conjunction with constructing and maintaining a 6' high open metal fence with 6' 6" high masonry columns on S. Lindhurst Avenue.

**Timeline:**

December 18, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 15, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. 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."

January 15, 2013: 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 January 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 7<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.

January 29 & 30, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior

Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

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

- This request focuses on constructing and maintaining a fence in the site's 40' front yard setback on a site that is developed with a single family home – a 6' high open wrought iron picket fence with 6' 6" high stone columns and two 8' high arched open wrought iron entry gates with 7' high stone columns flanked by two approximately 6' -6' 6" high, approximately 14' long curved solid stone wing walls.
- 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/elevation of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted revised site plan/elevation:
  - The proposal in the front yard setback is represented as being approximately 220' in length parallel to the street with two recessed entryways; and approximately 21' – 39' in length perpendicular to the street on the east and west sides of the site in the front yard setback, respectively.
  - The proposed fence is represented as being located approximately 1' from the property line or about 12' from the pavement line.
- The proposal would be located on the site where one lot would have direct frontage, a lot which has no fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences that appeared to be above 4' in height and located in a front yard setback. An approximately 6' high open metal fence is located immediately east of the subject site that appears to be the result of a special exception granted by the Board in 1997, and an approximately 6' high open metal fence is located immediately northeast of the subject site that appears to be a result of a special exception granted in 1995.
- The applicant has written that a similar request was granted by the Board in 2009 but the previous applicant never built the approved fence and that is what triggered the need for this request- a fence that while is similar in design, a request seeking to reduce the height of the previously approved fence.
- As of February 10, 2014, 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' will not adversely affect neighboring property.

- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted revised site plan/elevation would require the proposal exceeding 4' in height in the front yard setback to be constructed/maintained in the location and of the heights and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2014**

**APPEARING IN FAVOR:** Rob Baldwin, 3904 Elm, Suite B, Dallas, TX

**APPEARING IN OPPOSITON:** John Stenger, 4831 S. Lindhurst, Dallas, TX

**MOTION:** Carreon

I move that the Board of Adjustment in Appeal No. **BDA 134-010**, hold this matter under advisement until **March 17, 2014**.

**SECONDED:** Coulter

**AYES:** 4 – Richardson, Coulter, Carreon, Brannon

**NAYS:** 1 – Gaspard

**MOTION PASSED:** 4-1

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**FILE NUMBER:** BDA 134-015

**BUILDING OFFICIAL'S REPORT:** Application of Ashley Hanson for a special exception to the fence height regulations at 9849 County Cork Drive. This property is more fully described as Lot 4, Block D/5373, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 9 foot high fence, which will require a 5 foot special exception to the fence height regulations.

**LOCATION:** 9849 County Cork Drive

**APPLICANT:** Ashley Hanson

**REQUESTS:**

A special exception to the fence height regulations of 5' is requested in conjunction with maintaining a solid cedar wood fence that ranges in height (given grade changes on the site) from 7' 6" – 8' 10" in the one of the site's two front yard setbacks (Peavy Road) on a site that is developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

December 23, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 17, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 17, 2014: The Board Administrator shared the following information with the applicant via email:

- an attachment that provided the public hearing date and panel that will consider the application; the January 29th deadline to submit additional evidence for staff to factor into their analysis; and the February 7<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."

February 1, 2014: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on maintaining a solid cedar wood fence that ranges in height (given grade changes on the site) from 7' 6" – 8' 10" in the one of the site's two front yard setbacks (Peavy Road) on a site that is 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 site is located at the west corner of County Cork Drive and Peavy Road. The site has a 30' required front yard along County Cork Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25' front yard setback along Peavy Road, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 9' high fence is allowed by right. But the site's Peavy Road frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes northwest of the site that front/are oriented eastward towards Peavy Road. Regardless of how the home is oriented to front onto County Cork Drive (and "side" to Peavy Road), the site has two front yard setbacks where the focus of the applicant's request in this application is only to maintain fence higher than 4' in the site's front yard setback on Peavy Road. No part of the application is made to address any fence in the site's County Cork Drive front yard setback.
- The applicant has submitted a site plan and an elevation of the proposal in the front yard setback with notations indicating that the fence reaches a maximum height of 8' 10".
- The following additional information was gleaned from the submitted site plan:
  - The fence is represented as being approximately 75' in length parallel to the Peavy Road and approximately 12' perpendicular to Peavy Road on the southeast and northwest sides of the site in this front yard setback.



- The proposal is represented as being located about 13' from the Peavy Road front property line or about 33' from the Peavy Road pavement line.
- The proposal is located across from three single family homes none of which have fences in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of February 10, 2014, 2 letters have been submitted in support of the request and no letters/emails have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' will not adversely affect neighboring property.
- Granting this special exception of 5' 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 Peavy Road front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2014**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

**MOTION: Coulter**

I move that the Board of Adjustment grant application **BDA 134-015** 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: Gaspard**

AYES: 4 – Richardson, Coulter, Carreon, Gaspard

NAYS: 1 – Brannon

MOTION PASSED: 4-1

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**FILE NUMBER:** BDA 134-008

**BUILDING OFFICIAL'S REPORT:** Application of Daniel D. Dubree for special exceptions to the visual obstruction regulations at 5204 Maple Springs Boulevard. This property is more fully described as Lot 24, Block C/2334, and is zoned PD-193 (R-7.5) which requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 5204 Maple Springs Boulevard

**APPLICANT:** Daniel D. Dubree

**REQUESTS:**

Special exceptions to the visual obstruction regulations are made in conjunction with maintaining an existing 8' high solid wood fence in the two, 20' visibility triangles on either side of the driveway into the site from Crestview Drive on a site developed with a single family home.

**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:**

Denial

Rationale:

- The Sustainable Development and Construction Department Senior Engineer recommends that this request be denied because the fence in the visibility triangles at the driveway into the site from Crestview Drive is a safety hazard to pedestrians.
- The applicant has not substantiated how the location of the fence located in the two 20' visibility triangles at the driveway into the site from Crestview Drive does not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (R-7.5) (Planned Development, Single family)  
North: PD 193 (R-7.5) (Planned Development, Single family)  
South: PD 193 (R-7.5) (Planned Development, Single family)  
East: PD 193 (R-7.5) (Planned Development, Single family)  
West: PD 193 (R-7.5) (Planned Development, Single family)

**Land Use:**

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

**Timeline:**

December 17, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 15, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 15, 2014: The Board Administrator shared the following information with the applicant via email:

- an attachment that provided the public hearing date and panel that will consider the application; the January 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 7<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.”

January 28, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

February 6, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Recommends that this be denied” commenting “the fence appears to be a safety hazard to pedestrians (i.e. joggers, scooter riders).”

**GENERAL FACTS/STAFF ANALYSIS:**

- These requests focus on maintaining an existing 8' high solid wood fence in the two 20' visibility triangles on either side of the driveway into the site from Crestview Drive on a site developed with a single family home.
- 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).
- PD 193 defines "visibility triangle" as
  1. where a street designated on the city's thoroughfare plan intersects another street, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 45 feet from the intersection;
  2. where two streets not designated on the city's thoroughfare plan intersect, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 30 feet from the intersection;
  3. where an alley or driveway intersects with a street, the portion of a lot within a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and adjacent street curb line (or, if there are no street curbs, what would be the normal street curb line) and points on the driveway or alley edge and the street curb line 20 feet from the intersection.
- A site plan and elevation have been submitted indicating portions of a fence and sliding gate located in the two 20' visibility triangles on either side of the driveway into the site from Crestview Drive.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "the fence appears to be a safety hazard to pedestrians (i.e. joggers, scooter riders,...)."
- 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 existing 8' high solid wood fence located in the two 20' visibility triangles at the driveway into the site from Crestview Drive does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in the 20' drive approach visibility triangles into the site from Crestview Drive to that what is shown on these documents – an 8' high solid wood fence.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2014**

**APPEARING IN FAVOR:** Daniel Dubree, 5204 Maple Springs Blvd., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 134-008**, on application of Daniel D. Dubree, **grant** the request to maintain items in the visibility triangle as a special exception to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that the 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 site plan and elevation is required.

**SECONDED:** Coulter

**AYES:** 4 – Richardson, Coulter, Carreon, Gaspard

**NAYS:** 1 – Brannon

**MOTION PASSED:** 4– 1

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**FILE NUMBER:** BDA 123-127

**BUILDING OFFICIAL'S REPORT:** Application of Sandy Stephens of Cole Design Group for a special exception to the off-street parking regulations at 7754 Lyndon B. Johnson Freeway. This property is more fully described as Lot 4, Block C/7729, and is zoned MU-3, which requires off-street parking to be provided. The applicant proposes to construct and maintain a multifamily use and provide 168 of the required 185 parking spaces, which will require a 17 space special exception to the off-street parking regulations.

**LOCATION:** 7754 Lyndon B. Johnson Freeway

**APPLICANT:** Sandy Stephens of Cole Design Group

**REQUEST:**

A special exception to the off-street parking regulations of 17 spaces is requested in conjunction with constructing and maintaining a 98 unit multifamily development and providing 168 (or 91 percent) of the 185 off-street parking spaces required by code.

**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).
- 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.

**STAFF RECOMMENDATION (off-street parking special exception):**

Approval, subject to the following condition:

- The special exception of 17 spaces shall automatically and immediately terminate if and when the multifamily use that would normally need no more than 185 required parking spaces is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director and the Sustainable Development and Construction Department

Senior Engineer have indicated that they have no objections to the applicant's request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: MU-3 (Mixed Use)  
North: R-7.5(A) (Single family residential)  
South: MU-3 (Mixed Use)  
East: MU-3 (Mixed Use)  
West: MU-3 (Mixed Use)

**Land Use:**

The subject site is undeveloped. The area immediately north is the LBJ Freeway; the area to the east is developed with office use; the area to the west is developed with multifamily residential use; and the area to the south is developed with a vacant financial institution with drive-through window use.

**Zoning/BDA History:**

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

**Timeline:**

- October 17, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 12, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 13, 2013: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the November 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 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."
- December 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December

public hearing. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the Board.

December 6, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections.”

December 15, 2013: The Board of Adjustment Panel B conducted a public hearing on this application. The Board held the request under advisement until their next public hearing to be held on February 2014, in order for the applicant to submit additional materials to substantiate his parking reduction request.

December 19, 2013: The Board Administrator sent a letter to the applicant that noted the decision of the panel, the January 22<sup>nd</sup> deadline to submit any additional evidence for staff to factor into their analysis; and the February 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials.

January 22, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

February 6, 2013: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections.”

**GENERAL FACTS/STAFF ANALYSIS:**



- This request focuses on constructing and maintaining a 98 unit multifamily development and providing 168 (or 91 percent) of the 185 off-street parking spaces required by code.
- The Dallas Development Code requires the following off-street parking requirement:
  - Multifamily: one space per bedroom with a minimum of one space per dwelling unit. An additional one-quarter space per dwelling unit must be provided if the required parking is restricted to resident parking only. No additional parking is required for accessory uses that are limited principally to residents.
- The applicant has submitted a document stating that 168 of the 185 required off-street parking spaces are proposed to be provided.
- The applicant has provided a document showing among other things that the average utilized parking ratio per bedroom is less than 0.7:1 based on a parking analysis of multifamily affordable housing developments in the Dallas area; thus a parking requirement of one space per bedroom (per City Code) would likely result in under-use of parking.
- The Sustainable Development and Construction Department Engineering Division Assistant Director and the Sustainable Development and Construction Department Senior Engineer have indicated that they have no objections to the applicant's request.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed multifamily use does not warrant the number of off-street parking spaces required, and
  - The special exception of 17 spaces (or a 9 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 17 spaces shall automatically and immediately terminate if and when the multifamily use is changed or discontinued, the applicant would be allowed to construct and maintain the multifamily development, providing 168 of the 185 code required off-street parking spaces.

**BOARD OF ADJUSTMENT ACTION: DECEMBER 16, 2013**

APPEARING IN FAVOR: Sandy Stephen, 6175 Main St., Dallas, TX  
Paul Merrill, 4777 Cedar Springs, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment in Appeal No. **BDA 123-127**, hold this matter under advisement until **February 20, 2014**.

SECONDED: **Beikman**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2014**

APPEARING IN FAVOR: Lisa Stephens, 421 W 3<sup>rd</sup> St., Austin, TX  
Megan Deluno, 421 W. 3<sup>rd</sup> St., Austin, TX

APPEARING IN OPPOSITON: No one

**MOTION: Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 123-127**, on application of Sandy Stephens, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 17 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 17 off-street parking spaces automatically and immediately terminates if and when the multifamily use which would normally need no more than 185 required off-street parking spaces, are changed or discontinued.

**SECONDED: Carreon**

**AYES:** 4 – Richardson, Coulter, Carreon, Brannon

**NAYS:** 1 – Gaspard

**MOTION PASSED:** 4-1

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**MOTION: Gaspard**

I move to adjourn this meeting.

**SECONDED: Coulter**

**AYES:** 5– Richardson, Coulter, Carreon,

**NAYS:** 0 -

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

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

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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