

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
TUESDAY, JANUARY 19, 2016**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Mark Rieves, regular member, Michael Gibson, regular member, Gary Sibley, alternate member, and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: Charles Johnson, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator
Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Trena Law, Board Secretary, Bert Vandenberg, Asst. City Attorney, and Zachary Noblitt, Asst. City Attorney

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Mark Rieves, regular member, Michael Gibson, regular member, Gary Sibley, alternate member, and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: Charles Johnson, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator
Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Neva Dean, Interim Asst. Director, and Trena Law, Board Secretary

11:36 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 19, 2016** docket.

1:03 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 November 17, 2015 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-001(SL)

BUILDING OFFICIAL’S REPORT: Application of James B. Reeder, represented by Tim Hoch, to appeal the decision of an administrative official on property at 2225 N. Harwood Street. This property is more fully described as Lot 2B, Block A/358, and is zoned PD 193, PDS 50 (Tract 1). The applicant proposes to appeal the decision of an administrative official in the issuance of a temporary certificate of occupancy.

LOCATION: 2225 N. Harwood Street

APPLICANT: James B. Reeder
Represented by Tim Hoch

January 19, 2016 Public Hearing Notes:

- The Board Administrator circulated a letter from the applicant’s representative to the Board at the briefing (see Attachment A). This letter stated among other things that “We have reach a tentative agreement with the developer and, as a result, would like to withdraw our Application, *without prejudice* to refiling, if it becomes necessary.”

REQUEST:

The submitted application states that the applicant is appealing the 10/22/2015 decision made by the City of Dallas building official to approve the issuance of a Temporary Certificate of Occupancy TCO #1510134002 for property located at 2225. N. Harwood Street developed as a mixed use development, specifically in this case, a multifamily use (Miro) and related parking garage.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

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

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

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (PDS 50) Planned Development, Planned Development
North: PD 193 (HC) Planned Development, Heavy Commercial
South: PD 193 (HC) Planned Development, Heavy Commercial
East: PD 193 (PDS 50) Planned Development, Planned Development
West: PD 193 (HC) Planned Development, Heavy Commercial

Land Use:

The subject site is developed with a mixed use structure and parking garage that includes property at 2225 N. Harwood Street, the specific address that is the focus of this request which is a multifamily structure/use (Miro). The areas to the north, south, east and west are developed with a mix of residential, office, and retail uses.

Zoning/BDA History:

1. BDA 156-002, Property at 1900 Cedar Springs Road (the subject site) On January 19, 2016, the Board of Adjustment Panel A will consider an application appealing the 10/26/2015 decision made by the City of Dallas building official D. Sullivan to approve the issuance of a Temporary Certificate of Occupancy TCO #1510264002 for property located at 1900 Cedar Springs Road on property developed a mixed use development, specifically in this case, a restaurant use (Ruth's Chris Steak House) and related parking garage.

GENERAL FACTS/STAFF ANALYSIS:

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

Timeline:

November 5, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 7, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 7, 2015: The Board Administrator contacted the applicant’s representative and emailed the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 30th deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of application); and the January 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

January 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 7, 2015: The applicant’s representative emailed the Board Administrator that his client would not be seeking a reimbursement of the filing fee in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2016

APPEARING IN FAVOR: Tim Hoch, 5616 Malbey, Ft. Worth, Texas

APPEARING IN OPPOSITION: No one

MOTION: Agnich

Having fully reviewed the decision of the City of Dallas Building Official in Appeal No. BDA **156-001**, on application James B. Reeder, represented by Tim Hoch, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment affirm the decision of the building official and **deny** the relief requested by the applicant **without prejudice**.

SECONDED: Nolen

AYES: 5 – Nolen, Rieves, Gibson, Sibley, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-002(SL)

BUILDING OFFICIAL’S REPORT: Application of James B. Reeder, represented by Tim Hoch, to appeal the decision of an administrative official on property at 1900 Cedar Springs Road. This property is more fully described as Lot 2B, Block A/358, and is zoned PD 193, PDS 50 (Tract 1). The applicant proposes to appeal the decision of an administrative official in the issuance of a temporary certificate of occupancy.

LOCATION: 1900 Cedar Springs Road

APPLICANT: James B. Reeder
Represented by Tim Hoch

January 19, 2016 Public Hearing Notes:

- The Board Administrator circulated a letter from the applicant’s representative to the Board at the briefing (see Attachment A). This letter stated among other things that “We have reach a tentative agreement with the developer and, as a result, would like to withdraw our Application, *without prejudice* to refiling, if it becomes necessary.”

REQUEST:

The submitted application states that the applicant is appealing the 10/26/2015 decision made by the City of Dallas building official to approve the issuance of a Temporary Certificate of Occupancy TCO #1510264002 for property located at 1900 Cedar Springs Road developed as a mixed use development, specifically in this case, a restaurant use (Ruth’s Chris Steak House) and related parking garage.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

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

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

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (PDS 50) Planned Development, Planned Development
North: PD 193 (HC) Planned Development, Heavy Commercial
South: PD 193 (HC) Planned Development, Heavy Commercial
East: PD 193 (PDS 50) Planned Development, Planned Development
West: PD 193 (HC) Planned Development, Heavy Commercial

Land Use:

The subject site is developed with a mixed use structure and parking garage that includes property at 1900 Cedar Springs Road, the specific address that is the focus of this request which is a restaurant structure/use (Ruth's Chris Steak House). The areas to the north, south, east and west are developed with a mix of residential, office, and retail uses.

Zoning/BDA History:

1. BDA156-001, Property at 2225 N. Harwood Street (the subject site) On January 19, 2016, the Board of Adjustment Panel A will consider an application appealing the 10/22/2015 decision made by the City of Dallas building official to approve the issuance of a Temporary Certificate of Occupancy TCO #1510134002 for property located at 2225 N. Harwood Street on property developed a mixed use development, specifically in this case, a multifamily use (Miro) and related parking garage.

GENERAL FACTS/STAFF ANALYSIS:

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

Timeline:

November 5, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 7, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 7, 2015: The Board Administrator contacted the applicant's representative and emailed the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 30th deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of application); and the January 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

January 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 7, 2015: The applicant's representative emailed the Board Administrator that his client would not be seeking a reimbursement of the filing fee in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2016

APPEARING IN FAVOR: Tim Hoch, 5616 Malbey, Ft. Worth, Texas

APPEARING IN OPPOSITION: No one

MOTION: **Nolen**

Having fully reviewed the decision of the City of Dallas Building Official in Appeal No. BDA **156-002**, on application James B. Reeder, represented by Tim Hoch, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment affirm the decision of the building official and **deny** the relief requested by the applicant **without prejudice**.

SECONDED: **Agnich**

AYES: 5 – Nolen, Rieves, Gibson, Sibley, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-003(SL)

BUILDING OFFICIAL’S REPORT: Application of Peter Kavanagh of Zone Systems for a special exception to the fence height regulations at 4520 Cherokee Trail. This property is more fully described as Lot 6, Block O/4984, and is zoned PD 455, which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 7 foot 6 inch high fence in a required front yard, which will require a 3 foot 6 inch special exception to the fence height regulations.

LOCATION: 4520 Cherokee Trail

APPLICANT: Peter Kavanagh of Zone Systems

REQUEST:

A request for a special exception to the fence height regulations of 3’ 6” is made to replace an existing 8’ high wood fence with a new 7’ 6” high wood fence with 7’ 6” high brick columns in the site’s 30’ front yard setback along Pomona Road on a site that is currently undeveloped.

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: PD 455 (Planned Development)
North: PD 455 (Planned Development)
South: PD 455 (Planned Development)
East: PD 455 (Planned Development)
West: PD 455 (Planned Development)

Land Use:

The subject site is undeveloped. The areas to the north, south, and west are developed with single family uses, and the area to the east is developed with a park and a school (Bluff View Park and the Sudie L. Williams Elementary School).

Zoning/BDA History:

1. BDA 145-101, Property at 4520 Cherokee Trail (the subject site) On October 20, 2015, the Board of Adjustment Panel A denied a request for a special exception to the fence height regulations of 4' without prejudice. The case report stated the request was made to 1) replace an existing 8' high, approximately 90' long wood fence with a new 8' high wood fence; and 2) to continue the new 8' high wood fence approximately 60' further in length northward in the site's 30' front yard setback along Pomona Road on a site that was vacant.
2. BDA 145-076, Property at 4519 Cherokee Trail (the lot north of the subject site) On August 25, 2015, the Board of Adjustment Panel A denied a request for a special exception to the fence height regulations of 1' without prejudice. The case report stated the request was made to maintain an open picket/post fence that ranges in height given grade variations on the property from 4' 2 1/2" – 4' 6 1/2" on a site developed with a single family home.

3. BDA 990-201, Property at 4501 Cherokee Trail (three lots northwest of the subject site) On February 15, 2000, the Board of Adjustment Panel B denied a request for a special exception to the fence height regulations of 4.5' without prejudice. The case report stated the request was made to construct and maintain a 6' high open wrought iron picket fence with 6.5' high stone/brick columns, an 8' high open wrought iron gate with 8.5' high columns.

GENERAL FACTS/STAFF ANALYSIS:

- The request focuses on replacing an existing 8' high wood fence with a new 7' 6" high wood fence with 7' 6" high brick columns in the site's 30' front yard setback along Pomona Road on a site that is currently undeveloped.
- 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 subject site is located at the southwest corner of Cherokee Trail and Pomona Road in PD 455. Regardless of how a home would be oriented on the site (that is to front either Cherokee Trail or Pomona Road), it has two 30' front yard setbacks. The site has a 30' front yard setback along Pomona Road (the shorter of the two frontages of the subject site) and a 30' front yard setback along Cherokee Trail (the longer of the two frontages that while usually would be considered a side yard is a front yard notwithstanding in order to maintain continuity of the established front yard setback along this street frontage where homes to the west that "front" northward to Cherokee Trail).
- The submitted site plan and elevation of the fence proposal indicates that it is located in the site's Pomona Road 30' front yard setback and that it reaches a maximum height of 7' 6".
- The submitted site plan and elevation represents a fence to exceed 4' in height only in the site's Pomona Road front yard setback, and not in the Cherokee Trail front yard setback.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 107' in length parallel to the Pomona Road and approximately 25' and 30' perpendicular to this street on the northeast and southwest sides of the site in the Pomona Road 30' front yard setback.
 - The fence is represented to be located on the Pomona Road front property line or about 25' from the Pomona Road pavement line.
- The fence proposal is located on the site where no single family home has direct frontage – a park (Bluff View Park) fronts the fence on the subject site and has an approximately 4' high chain link fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Pomona Road (approximately 400 feet north and south of the site) and noted one other visible fence above 4 feet high which appeared to be located in a front yard setback – an approximately 6' high chain link fence south of the site at the Sudie L. Williams Elementary School.

- As of January 8, 2016, 1 letter had been submitted in support/no issue, and 2 letters had been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' 6" will not adversely affect neighboring property.
- Granting this special exception of 3' 6" 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 these documents.

Timeline:

November 13, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 7, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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."

December 7, 2015: The Board Administrator contacted the applicant and emailed the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the December 30th deadline to submit additional evidence for staff to factor into their analysis; and the January 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."

January 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2016

APPEARING IN FAVOR: Greg Beasley, 4520 Cherokee Trail, Dallas, TX
Peter Kavanagh, 1620 Handley, Dallas, TX
Teann Nash, 4801 Alan Dale LN, Dallas, TX
Bob Nash, 4801 Alan Dale LN, Dallas, TX

APPEARING IN OPPOSITION: Joe Werner, 4400 Bluffview Blvd, Dallas, TX
Ann Huntingon, 2020 Lila Lane, Dallas, TX
Carl Boettcher, 4716 Cherokee Trail, Dallas, TX
Nancy Kenty, 8723 Canyon Drive, Dallas, TX

MOTION: Nolen

I move that the Board of Adjustment, in request No. **BDA 156-003**, on application of Peter Kavanagh, **grant** the request to construct and maintain a 7-foot 6 inch high fence in the property's Pomona Road 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 site plan and elevation is required.

SECONDED: Sibley
AYES: 4 – Nolen, Gibson, Sibley, Agnich
NAYS: 1 – Rieves
MOTION PASSED: 4 – 1

MOTION: Nolen

I move to adjourn this meeting.

SECONDED: Agnich
AYES: 5 – Nolen, Rieves, Gibson, Sibley, Agnich
NAYS: 0 -
MOTION PASSED: 5 – 0 (unanimously)

2:34 P. M.: - Board Meeting adjourned for **January 19, 2016**

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.