

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, February 18, 2020**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Chair, Jay Narey, regular member Sarah Lamb, regular member, Lawrence Halcomb, regular member, Phil Sahuc, alternate member

MEMBERS ABSENT FROM BRIEFING: Taylor Adams, regular member

STAFF PRESENT AT BRIEFING: Sarah May, Interim Chief Planner/Board Administrator, Jennifer Munoz, Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Elaine Hill, Acting Board secretary, LaTonia Jackson, Board Secretary, David Nevarez, Engineering, Neva Dean, Assistant Director

MEMBERS PRESENT AT HEARING: Cheri Gambow, Chair, Jay Narey, regular member Sarah Lamb, regular member, Lawrence Halcomb, regular member, Phil Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: Taylor Adams, regular member

STAFF PRESENT AT HEARING: Sarah May, Interim Chief Planner/Board Administrator, Jennifer Munoz, Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Elaine Hill, Acting Board secretary, LaTonia Jackson, Board Secretary, David Nevarez, Engineering, Neva Dean, Assistant Director

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 18, 2020** docket.

1:01 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

Approval of the Board of Adjustment Panel A, February 18, 2020 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: February 18, 2020

MOTION: Lamb

Approval of the Board of Adjustment Panel A, February 18, 2020 public hearing minutes.

SECONDED: Sahuc

AYES: 5 – Gambow, Lamb, Narey, Halcomb, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-013(SM)

BUILDING OFFICIAL’S REPORT: Application of E. Taylor Robertson, represented by Stuart Mut, for a special exception to the visual obstruction regulations at 5944 Morningside Avenue. This property is more fully described as Lot 12, Block A/2862, and is zoned CD No. 11, which requires 20-foot visibility triangles at the intersection of driveway approaches and alleys. The applicant proposes to construct and/or maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5944 Morningside Avenue

**APPLICANT: E. Taylor Robertson
Represented by Stuart Mut**

REQUEST:

A request for a special exception to the visual obstruction regulations is to maintain an existing six-foot four-inch high solid wood fence located in both of the 20-foot visibility triangles on the north and south sides of the driveway on a site that is developed with a nonconforming duplex.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d) (3) of the Dallas Development Code states that 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:

Approval, subject to the following condition:

- Compliance with the submitted revised site and elevation plans are required.

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items to be located in the visibility triangles do not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: CD No 11 (Conservation District)
North: CD No 11 (Conservation District)
East: CD No 11 (Conservation District)
South: CD No 11 (Conservation District)
West: CD No 11 (Conservation District)

Land Use:

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

Zoning/BDA History:

There have been three related board or zoning cases recorded in the vicinity within the last five years.

1. **BDA189-057(OA)** On May 22, 2019, the Board of Adjustment Panel C granted special exceptions to the visual obstruction regulations to maintain portions of an eight-foot high solid wood fence and portions of an eight-foot high rolling solid wood gate in the two 20-foot visibility triangles on both sides of the driveway into the site from Concho Street; and to maintain at 5947 Mercedes Avenue (one lot south of the subject site)

portions of an eight-foot high solid wood fence in the 20-foot visibility triangle at where the alley meets Concho Street.

2. **BDA178-044(OA)** On March 19, 2018, the Board of Adjustment Panel C granted special exceptions to the visual obstruction regulations to maintain a six-foot-two-inch high solid wood fence with a six-foot high swing wood gate in the two 20-foot visibility triangles on both sides of the driveway into the site from Concho Street, and in the 20-foot visibility triangle at where the alley meets Concho Street on a site developed with a single family home.
at 5947
Morningside
Avenue (one lot
north of the
subject site)
3. **BDA178-078(OA)** On August 22, 2018, the Board of Adjustment Panel B granted special exceptions to the visual obstruction regulations to replace, construct and maintain portions of an 8' high solid wood fence and maintain portions of a wrought iron gate in the two 20-foot visibility triangles on both sides of the driveway into the site from Concho Street on a site developed with a single family home.
at 5946
McCommas
Boulevard (two
lots north of the
subject site)

GENERAL FACTS/STAFF ANALYSIS:

The purpose of this request for a special exception to the visual obstruction regulations is to maintain an existing six-foot four-inch high solid wood fence located in both of the 20-foot visibility triangles on the north and south sides of the driveway on a site that is developed with a nonconforming duplex.

The property is located in a zoning district (CD No. 11) which requires compliance with Section 51A-4.602(d) of the Dallas Development Code which 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 submitted revised site plan and elevation indicates portions of a six-foot four-inch solid wood fence and portions of a six-foot four-inch high rolling wood gate located in two 20-foot visibility triangles on both sides of the driveway into the site from Concho Street.

As of February 7, 2020, no letters in opposition or support to the request have been received by staff.

The applicant has the burden of proof in establishing how granting these requests to maintain portions of a six-foot four-inch solid wood fence and portions of a six-foot four-inch high rolling wood gate in these 20-foot visibility triangles, do not constitute a traffic hazard. The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections.”

Granting these requests with a condition imposed that the applicant complies with the submitted revised site plan and elevation would limit the items to that what is shown on these documents.

Timeline:

November 15, 2019: 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 5, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

December 9, 2019: The Interim Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:

- a copy of the application materials including the Building Official’s report on the application.
- 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 30, 2019: 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 following: the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans

Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

December 30, 2019: The City of Dallas Sustainable Development and Construction Senior Engineer submitted a memo regarding this application (see Attachment A).

December 31, 2019: Since a revised site plan was not submitted by the deadline for the docket for the January meeting, the Interim Board of Adjustment Chief Planner/Board Administrator emailed the applicant's representative the new public hearing date and panel that will consider the application; the January 28th deadline to submit additional evidence for staff to factor into their analysis.

January 17, 2020: The applicant's representative submitted a revised site plan which indicate the current location of the requested items in the visibility triangles (see Attachment B).

January 30, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.

BOARD OF ADJUSTMENT ACTION: February 18, 2020

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gambow**

I move that the Board of Adjustment, in Appeal No. **BDA 190-013**, application of E. Taylor Robertson, represented by Stuart Mut **grant** for a special exception to the visual

obstruction regulations contained in the Dallas Development Code, subject to the following condition:

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

SECONDED: Narey

AYES: 5 – Gambow, Lamb, Narey, Halcomb, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-021(OA)

BUILDING OFFICIAL’S REPORT: Application of Raquel Renda, represented by Peter Dodd, for special exceptions to the fence height regulations, the fence standard regulations, and visual obstruction regulations at 5830 Falls Road. This property is more fully described as Lot 4 and part of Lot 3 in Block A/5614, and is zoned R-1ac(A), which limits the height of a fence in the front yard to four feet, requires a fence panel with a surface area that is less than 50 percent open to be located a minimum of five feet from the front lot line, and requires a 20-foot visibility triangle at the intersection of streets and driveway approaches. The applicant proposes to construct and/or maintain up to an eight-foot high fence in a required front yard, which will require a four-foot special exception to the fence regulations; to construct a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, which will require a special exception to the fence regulations; and, to locate items in required visibility triangles, which requires a special exception to the visual obstruction regulations.

LOCATION: 5830 Falls Road

APPLICANT: Raquel Renda
Represented by Peter Dodd

REQUESTS:

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

1. A request for a special exception to the fence standards regulations related to the maximum fence height of four feet is made to construct and maintain an eight-foot high solid stone/brick fence and two seven-foot-six-inch solid metal gates in the site’s front yard.
2. A request for a special exception to the fence standards regulations related to fence panels with a surface area that is less than 50 percent open and less than five feet from the front lot line is made to construct and maintain the aforementioned eight-foot high solid stone/brick fence less than five feet from the front lot line.

3. A request for a special exception to the visual obstruction regulations is made to locate and maintain the aforementioned eight-foot high solid stone/brick fence and two seven-foot-six-inch solid metal gates in the four 20-foot visibility triangles at the intersection of streets and drive approaches into the site from Falls Road.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards regulations 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:

Section 51A-4.602(d)(3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION (fence standards regulations):

No staff recommendation is made on this or any request for a special exception to the fence standards 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 regulations):

Approval, subject to the following conditions:

1. Compliance with the submitted site plan and elevation is required.
2. The site must comply with City driveway width standards.

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests if the aforementioned conditions are imposed as part of the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items to be located and maintained in the visibility triangles do not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

- Site: R-1ac(A) (Single Family District)
North: R-1ac(A) (Single Family District)
South: R-1ac(A) (Single Family District)

East: R-1ac(A) (Single Family District)

West: R-1ac(A) (Single Family District)

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 have not been any recent related board or zoning cases recorded in the vicinity of the subject site within the last five years.

GENERAL FACTS/STAFF ANALYSIS (fence standards special exceptions):

- The requests for special exceptions to the fence standards regulations on a site developed with a single-family home focus on:
 1. Constructing and maintaining an eight-foot high solid stone/brick fence and two seven-foot-six-inch solid metal gates in the site's front yard; and,
 2. Constructing/maintaining the aforementioned eight-foot high solid stone/brick fence within five feet of the front lot line.
- The Dallas Development Code states that in all residential districts, except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.
- The Dallas Development Code states that no fence panel having less than 50 percent open surface area may be located less than five feet from the front lot line.
- The subject site is zoned R-1ac(A) which requires a 40-foot front yard setback.
- The applicant has submitted a site plan and elevation of the proposed fence. The site plan and elevation represent a fence that is over four feet in height (an eight-foot high solid stone/brick) in the site's required front yard.
- The following additional information was gleaned from the submitted site plan:
 - The proposed fence is approximately 115 feet in length parallel to Falls Road and runs an additional 40 feet perpendicular to Falls Road on both side property lines in the required front yard.
 - The minimum distance between the proposed fence and the pavement line is approximately 12 feet.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and the surrounding area and noted several other fences that appeared to be above four feet in height and located in a front yard setback. These existing fences have no recorded BDA history within the last five years.
- As of February 7, 2020, no letters have been submitted in support of the request, and two letters have been submitted in opposition.

- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height (eight-foot high solid stone/brick fence and two seven-foot-six-inch solid metal gates in the site's front yard) and related to a fence with panels with surface areas less than 50 percent open within five feet of the front lot line will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposed fence, which exceeds four feet in height in the front yard setback and with fence panels with surface areas less than 50 percent open within five feet of the front lot line, to be constructed and maintained in the location, heights, and materials as shown on these documents.

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

- The request for a special exception to the visual obstruction regulations on a site developed with a single family home focus on locating and maintaining an eight-foot high solid stone/brick fence and two seven-foot-six-inch solid metal gates in the four 20-foot visibility triangles at the drive approaches into the site from Falls Road.
- Section 51A-4.602(d) of 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 property is located in R-1ac(A) zoning district which requires the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.
- A site plan and elevation have been submitted indicating portions of an 8-foot high solid stone/brick fence in four 20-foot visibility triangles at the drive approaches into the site from Falls Road.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections" (see Attachment A).
- The applicant has the burden of proof in establishing how granting these requests to maintain portions of an 8-foot high solid stone/brick fence in four 20-foot visibility triangles at drive approaches into the site from Falls Road 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 to be located and maintained in the four 20-foot visibility triangles at the drive approach into the site from Falls Road, to that what is shown on these documents – portions of an 8-foot high solid stone/brick fence.

Timeline:

December 13, 2019: 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 13, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 17, 2020: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- An attachment that provided the public hearing date and panel that will consider the application; the January 30th deadline to submit additional evidence for staff to factor into their analysis; and, the February 7th 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 30, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.

January 30, 2020: The City of Dallas Sustainable Development and Construction Senior Engineer submitted a memo regarding this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: February 18, 2020

APPEARING IN FAVOR: Raquel Renda, 5830 Falls Rd., Dallas, TX
Peter Dodd, 3550 Golfing Green Dr., Farmers Branch, TX

APPEARING IN OPPOSITION: Vinita Patel, 5814 Falls Rd., Dallas, TX

MOTION 1 of 3: Sahuc

I move that the Board of Adjustment, in Appeal No. BDA 190-021, on application of Raquel Renda, represented by Peter Dodd, **deny** the special exception requested by this applicant to construct and/or maintain an eight-foot high fence **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Lamb

AYES: 5 – Gambow, Narey, Lamb, Halcomb, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION 2 of 3: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 190-021, on application of Raquel Renda, represented by Peter Dodd, **deny** the special exception to construct and/or maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Sahuc

AYES: 5 – Gambow, Narey, Lamb, Halcomb, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION 3 of 3: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 190-021, on application of Raquel Renda, represented by Peter Dodd, **grant** the request to maintain items in the visibility triangles at the driveway approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code, as amended:

1. Compliance with the submitted revised site plan and revised elevation is required.
2. The site must comply with city driveway width standards.

SECONDED: Sahuc

AYES: 5 – Gambow, Narey, Lamb, Halcomb, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-023(OA)

BUILDING OFFICIAL’S REPORT: Application of Mendel Dubrawsky, represented by Bobby Corgan, for a variance to the front yard setback regulations and for a special exception to the fence height regulations at 6710 Levelland Road. This property is more fully described as Lot 1A, Block B/8727 and is zoned PD No. 106, which requires a front yard setback of 30 feet and limits the height of a fence in the front yard to four feet. The applicant proposes to construct and/or maintain a structure and provide a five-foot front yard setback, which will require a 25-foot variance to the front yard setback regulations, and to construct and/or maintain an eight-foot high fence in a required front yard, which will require a four-foot special exception to the fence regulations.

LOCATION: 6710 Levelland Rd

APPLICANT: Mendel Dubrawsky
Represented by Bobby Corgan

REQUESTS:

The following requests have been made on a site that is developed with a synagogue:

1. A variance to the front yard setback regulations of 25 feet is made to construct an approximately 4,600-square-foot rear patio trellis structure five feet from one of the site’s two required front yards, on Shell Flower Lane, or 25 feet into this 30-foot front yard setback; and
2. A special exception to the fence standards related to the height of four feet is made to construct/maintain an eight-foot high tubular metal fence and two 8-foot high tubular metal gates in one of the site’s two front yards on Shell Flower Lane.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION (Variance to the Front Yard Setback Regulations):

Denial.

Rationale:

- Staff concluded that the applicant had not substantiated how the variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same religious land use.

STAFF RECOMMENDATION (fence standards):

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

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 106 (Planned Development District)
North: PD No. 106 (Planned Development District)
East: PD No. 106 (Planned Development District)
South: MF-3(A) (Multifamily district 3)
West: CR (Community retail district 1)

Land Use:

The subject site is developed with a Synagogue. The areas to the north and east are developed with single family uses; the area to the south is developed with multifamily uses, and the area to the west is developed with commercial retail uses.

Zoning/BDA History:

There have not been any related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- The request for a variance to the front yard setback regulations of 25 feet focuses on constructing and maintaining an approximately 4,600-square-foot rear patio trellis structure five-feet from one of the site's two required front yards on Shell Flower Lane or 25 feet into this 30-foot front yard setback.
- The subject site is zoned PD No 106 which requires a 30-foot front yard setback.
- The subject site is located at the northeast corner of Duffield Drive and Levelland Road. This subject site has a required 30-foot front yard setback from Duffield Drive and a required 30-foot front yard from Shell Flower Lane.
- The submitted plan represents that an outdoor pavilion structure is proposed to be located as close five feet from one of the site's two required front yards on Shell Flower Lane or 25 feet into this 30-foot front yard setback.
- The following additional information was gleaned from the submitted site plan and elevation:
 - The outdoor pavilion structure is represented as being approximately 100 feet in length parallel to Shell Flower Lane.
 - The outdoor pavilion structure is represented as being located approximately 5 feet to 15 feet from the property line fronting Shell Flower Lane.
 - The outdoor pavilion structure reaches approximately a maximum height of 10 feet.

- The subject site is flat, rectangular in shape, and according to the application, it is 1.377 acres (or approximately 59,980 square feet) in area. The site is zoned PD No 106 where the typical lot size is 10,000 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No 106 zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 106 zoning classification.
- If the Board were to grant this request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which is a fountain structure to be located five feet from the site’s front property line or 25 feet into the required 30-foot front yard setback.

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- The request for a special exception to the fence standards related to the height of four-feet focuses on constructing/maintaining an eight-foot high tubular metal fence and two eight-foot high tubular metal gates in one of the site’s two front yards on Shell Flower Lane on a site being developed with a synagogue.
- The subject site is zoned PD No. 106 which requires a 30-foot front yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.
- The site is located at the northeast corner of Duffield Drive and Levelland Road. This subject site has a required 30-foot front yard setback along Duffield Drive and a 30-foot front yard along Shell Flower Lane.
- The applicant submitted site plan and elevation representing the proposed fences in the front yard setback with notations indicating that the proposal reaches a maximum height of eight feet.
- The following additional information was gleaned from the submitted site plan:

- The proposal is represented as being approximately 110 feet in length parallel to Shell Flower Lane and approximately 30 feet perpendicular to Shell Flower Lane on the west of the drive and the west sides of the site in this front yard setback.
- The proposal is represented as being located approximately at the front property line.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and the surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to fence height of eight feet will not adversely affect neighboring property.
- As of February 7, 2020, no letters have been submitted in support of or in opposition to this request.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding four feet in height to be located in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

December 18, 2018: 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 13, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

January 17, 2020: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 7th 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 30, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.

February 3, 2020: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: February 18, 2020

APPEARING IN FAVOR: Bobby Corgan, 2536 Stone Creek Dr. Plano, TX, Josh Hochschuler, 5908 Steuben Ct., Dallas, TX
Rabbi Mendel Dubrawsky, 6618 Shell Flower Ln., Dallas, TX.

APPEARING IN OPPOSITION: No one

MOTION 1 of 2: Sahuc

I move that the Board of Adjustment, in Appeal No. BDA 190-023, on application of Mendel Dubrawsky, represented by Bobby Corgan, **grant** the 25-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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 is required.

SECONDED: Lamb

AYES: 5 – Gambow, Narey, Lamb, Halcomb, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION 2 of 2: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 190-023, on application of Mendel Dubrawsky, represented by Bobby Corgan, **grant** the request of this applicant to construct and/or maintain an eight-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, 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: Sahuc

AYES: 5 – Gambow, Narey, Lamb, Halcomb, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-025(SM)

BUILDING OFFICIAL’S REPORT: Application of Jennifer Gansert of Kimley-Horn and Associates for a variance to the front yard setback regulations at 2026 Greenville Avenue. This property is more fully described as Lot 1, Block 1/1905, and is zoned PD No. 842, which requires a front yard setback of 15 feet. The applicant proposes to construct and/or maintain a structure and provide a three-foot five-inch front yard setback, which requires an 11-foot seven-inch variance to the front yard setback regulations.

LOCATION: 2026 Greenville Avenue

APPLICANT: Jennifer Gansert of Kimley-Horn and Associates

REQUEST:

A request for a variance to the front yard setback regulations of 11 feet seven inches is made to construct a 1,070-square-foot raised patio deck and open trellis structure. The structure is proposed to be located three feet, five inches front from Greenville Avenue and nine feet six inches from Prospect Avenue, which requires a variance to the front yard setback regulations.

STANDARD FOR A VARIANCE¹:

The applicant has the burden of proof in establishing the following standards have been met in consideration of granting the above request.

¹ Reference Section 51(A)-3.102(d)(10) of the Dallas Development Code.

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

Although the request is not seen to be contrary to public interest, staff recommends denial because the applicant has not provided documentation to prove the following components of the variance standards were met prior to the January 30th Board of Adjustment staff review meeting:

1. how the variance was necessary to permit development of this parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope (in this case, the site is 11,840 square feet in area, according to Dallas Central Appraisal District records, rectangular in shape, and is flat) that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same PD No. 842 zoning where in this application, features of the site have allowed it to be developed with a restaurant that complies with setbacks
2. how granting this request would not be to relieve a self-created or personal hardship, nor for financial reasons only.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 842 (Planned Development District)
North: PD No. 842 (Planned Development District)
East: PD No. 167 (Planned Development District)
South: PD No. 842 (Planned Development District)
West: PD No. 842 (Planned Development District)

Land Use:

The subject site is developed with a vacant restaurant. The areas to the north and south are developed with restaurant without drive-in or drive-through uses and a general merchandise or food store greater than 3,500 square feet use is located to the west.

Zoning/BDA History:

There have been no related board or zoning cases in the vicinity of the subject site within the last five years.

GENERAL FACTS /STAFF ANALYSIS:

The purpose of this request for a variance to the front yard setback regulations of 11 feet seven inches is to construct a 1,070-square-foot raised patio deck and open trellis structure for an existing restaurant that is now vacant. The structure is proposed to be located three feet, five inches front from Greenville Avenue and nine feet six inches from Prospect Avenue, which requires a variance to the front yard setback regulations.

The subject site is flat, rectangular in shape, approximately 11,840 square feet in lot area, and is located at the southeast corner of Greenville Avenue and Prospect Avenue which is in the PD No. 842 zoning district. PD No. 842 requires a minimum front yard setback of 15 feet and no minimum lot size. Because the site is on the corner of two streets and because it is not in a single family, duplex, or agricultural district, the subject site has two front yard setbacks² on both Greenville Avenue and Prospect Avenue.

If the board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setbacks would be limited to what is shown on this document, which is a raised patio deck and open trellis structure that would be located three feet five inches front from Greenville Avenue and nine feet six inches from Prospect Avenue.

TIMELINE:

² Reference §51A-2.102(41) and §51A-4.401(b)(1) of the Dallas Development Code for the definition of front yard and for the front yard provisions for residential districts.

- December 19, 2019: 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 13, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- January 30, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.
- January 30, 2020: The applicant’s representative submitted a letter to the board (see Attachment A).
- January 31, 2020: The Interim Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; staff’s recommendation; and the February 7th deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:
- a copy of the application materials including the Building Official’s report on the application.
 - 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 7, 2020: The applicant submitted additional information for the board’s consideration (see Attachment B).
No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: February 18, 2020

APPEARING IN FAVOR: Jennifer Gansert, 3210 Main St, Dallas, TX

Keith Anderson, 14990 Landmark Blvd #265, Dallas, TX
Jack Gibbons, 16400 Dallas Tollway, #100, Dallas, TX

APPEARING IN OPPOSITION: Melissa Kingston, 5901 Palo Pinto, Dallas, TX
Bruce Richardson, 5607 Richmond, Dallas, TX
Mike Northrup, 5703 Goliad Ave., Dallas, TX

MOTION: **Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 190-025, on application of Jennifer Gansert of Kimley-Horn and Associates, **deny** the variance to the front yard setback regulations requested by this applicant **with** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

SECONDED: **Halcomb**

AYES: 4 – Gambow, Narey, Lamb, Halcomb

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

Phil Sahuc did not hear or vote on this case

FILE NUMBER: BDA190-014(OA)

BUILDING OFFICIAL'S REPORT: Application of Welch Liles of AP Blanton Deep Ellum, LLC, represented by Karl A. Crawley of Masterplan, for a special exception to the parking regulations at 2801 Virgil Street. This property is more fully described as part of Lots 6 and 7, Block 12/192, and is zoned PD No. 269 (Tract A), which requires parking to be provided. The applicant proposes to construct and/or maintain a nonresidential structure for an inside commercial amusement use, and provide five of the required 17 parking spaces, which will require a 12-space special exception (75% reduction) to the parking regulations.

LOCATION: 2801 Virgil Street

APPLICANT: Welch Liles of AP Blanton Deep Ellum, LCC
Represented by Karl A. Crawley of Masterplan

REQUEST:

A request for a special exception to the off-street parking regulations of 12 spaces is made to remodel and maintain an inside commercial amusement structure contain

5,900 square feet of floor area and provide five of the 17 required off-street parking spaces.

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

Section 51A-4.311 of the Dallas Development Code states the following:

- 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 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
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

ORIGINAL STAFF RECOMMENDATION (January 21, 2020):

Denial.

Rationale:

- The Sustainable Development and Construction Department finds that the special exception would create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

REVISED STAFF RECOMMENDATION (February 18, 2020):

Denial.

Rationale:

- The Sustainable Development and Construction Department finds that the special exception would create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 269 (Planned Development Tract A)

North: PD No. 269 (Planned Development Tract A)

South: PD No. 269 (Planned Development Tract A)
East: PD No. 269 (Planned Development Tract A)
West: PD No. 269 (Planned Development Tract A)

Land Use:

The subject site is proposed to be converted into an inside commercial amusement use. The areas to the north, east, south, and west are developed with nonresidential uses.

Zoning/BDA History:

There have not been any related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the off-street parking regulations of 12 spaces focuses on converting a structure into an inside commercial amusement use with 5,900 square feet of floor area with providing five on-street parking spaces of the 17 off-street required parking spaces.
- PD No. 269 does not require inside commercial amusement uses provide off-street parking spaces for the first 2,500 square feet of floor area in a ground-level use that has a separate certificate occupancy in an original building. A minimum of one space per 100 square feet of floor area is required for the remaining floor area of an inside commercial amusement use. PD No. 269 also allows a 10-percent reduction to off-street parking requirements when a use is located within one-fourth mile of a DART light-rail station.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “denial”.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed inside amusement structure with 5,900 square feet of floor area does not warrant the number of off-street parking spaces required: and
 - The special exception of 12 spaces (or a 75-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 12 spaces shall automatically and immediately terminate if and when the commercial amusement (inside) use is changed or discontinued.

TIMELINE:

November 14, 2019: 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 5, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 17, 2019: The Board Administrator emailed the applicant's representative the public hearing date and panel that will consider the application; the December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application.
- 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 30, 2019: 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 following: the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

December 30, 2019: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Denial".

January 21, 2020: The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action on this application until the next public hearing to be held on February 18, 2020.

January 27, 2020: The Board Senior Planner wrote the applicant a letter of the board's action; the January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 7th deadline to submit additional evidence to be incorporated into the Board's docket materials.

January 28, 2020: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment

Senior Planner beyond what was submitted with the original application (see Attachment A).

January 30, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.

January 21, 2020: The Board of Adjustment Panel A conducted a public hearing on this application, and delayed action on this application until the next public hearing to be held on January 21, 2020.

January 27, 2020: The Board Senior Planner wrote the applicant a letter of the board's action; the January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 7th deadline to submit additional evidence to be incorporated into the Board's docket materials.

January 28, 2020: The applicant submitted additional documentation on this application to the Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment A).

January 30, 2020: 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 Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.

January 30, 2020: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Denial"

BOARD OF ADJUSTMENT ACTION: February 18, 2020

APPEARING IN FAVOR: Wes Hoblit, 2201 Main St., #1280, Dallas, TX.

APPEARING IN OPPOSITION: No one

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 190-014, on application of Welch Liles of AP Blanton Deep Ellum, LLC, represented by Karl Crawley of Masterplan, **grant** the request of this applicant to provide five off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code, as amended, which require 17 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for an inside commercial amusement use only.

I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

The special exception of 12 spaces shall automatically and immediately terminate when the inside commercial amusement use is changed or discontinued

SECONDED: Narey

AYES: 5 – Gambow, Narey, Lamb, Halcomb, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

3:56 P.M. Board Meeting adjourned for **February 18, 2020.**

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.