**BOARD OF ADJUSTMENT**, **PANEL B**
**PUBLIC HEARING MINUTES**
**DALLAS CITY HALL, COUNCIL CHAMBERS**
**WEDNESDAY, MARCH 18, 2015**

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|---|---|
| MEMBERS PRESENT AT BRIEFING: | Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Scott Hounsel, regular member, Charles Johnson, regular member and Robert Agnich, alternate member |
| MEMBERS ABSENT FROM BRIEFING: | No one |
| MEMBERS PRESENT AT HEARING: | Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Scott Hounsel, regular member, Charles Johnson, regular member and Robert Agnich, alternate member |
| MEMBERS ABSENT FROM HEARING: | No one |
| STAFF PRESENT AT BRIEFING: | Steve Long, Board Administrator, Donna Moorman, Chief Planner, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, David Lam, Engineer, and Trena Law, Board Secretary |
| STAFF PRESENT AT HEARING: | Steve Long, Board Administrator, Donna Moorman, Chief Planner, Jamilah Way, Asst. City Attorney, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, David Lam, Engineer, and Trena Law, Board Secretary |

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**10:35 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 18, 2015 docket.**

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**1:07 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 B February 18, 2015 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2015**

MOTION: None

The minutes were approved as amended.

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## MISCELLANEOUS ITEM NO. 2

**FILE NUMBER**: BDA 134-049

**REQUEST**: To waive the two year limitation on a final decision reached by Board of Adjustment Panel B on May 21, 2014 - a request for a special exception to the fence height regulations that was denied with prejudice.

**LOCATION**: 8216 Inwood Road

**APPLICANT:** Santos Martinez of Masterplan

**STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD**:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

**GENERAL FACTS/TIMELINE**:

May 21, 2014: The Board of Adjustment Panel B denied a request for special exception to the fence height regulations with prejudice. The case report stated that the request was made to construct/maintain an a 6' high open iron fence and gate with 6' 6" high stucco columns in the 35' front yard setback on a site that was developed with a single family home/use.

February 18, 2015: The Board of Adjustment Panel B denied a miscellaneous item request to waive the two year limitation on a final decision reached by Board of Adjustment Panel B on May 21, 2014 - a request for a special exception to the fence height regulations that was denied with prejudice.

March 6, 2015: The applicant submitted a letter (with related materials) to staff requesting that the Board waive the two year limitation on the request for a special exception to the fence height regulations denied with prejudice by Board of Adjustment Panel B on May 21, 2014 (see Attachment A). This miscellaneous item request to waive the two year limitation was made in order for the applicant to file a new application for a fence height special exception on the property.

Note that The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
- If the board renders a final decision of denial without prejudice, the two year limitation is waived.
- The applicant may apply for a waiver of the two year limitation in the following manner:
  - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
  - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.

March 6, 2015: The Board Administrator emailed the applicant information regarding his miscellaneous item request that included information about the application filed in 2014 (see Attachments B and C).

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2015**

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move to **waive** the two year limitation on a final decision reached by Board of Adjustment Panel B on May 21, 2014 - a request for a special exception to the fence height regulations that was denied with prejudice.

SECONDED: **Johnson**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

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**FILE NUMBER**: BDA 145-031

**BUILDING OFFICIAL'S REPORT:** Application of Ellen Grasso Isreal for a special exception to the fence height regulations at 4686 Meadowood Road. This property is more fully described as Lot A, Block 5543, 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 a 9 foot high fence, which will require a 5 foot special exception to the fence height regulations.

**LOCATION**: 4686 Meadowood Road

**APPLICANT:** Ellen Grasso Isreal

**March 18, 2015 Public Hearing Notes**:

- The applicant submitted a revised site plan and elevation to the Board at the public hearing.

**REQUEST**:

A request for a special exception to the fence height regulations of 5' is made to replace existing fences that exceed 4' in height in one of its two 40' front yard setbacks on a site developed with a single family home use.

More specifically the request is made to replace and maintain the following in the site's Walnut Hill Lane 40' front yard setback: a 9' high solid brick fence is proposed to replace an approximately 7' high solid brick fence parallel to Walnut Hill Lane on the north, and an 8' high solid brick fence is proposed to replace an 8' high open picket perpendicular to Walnut Hill Lane on the west adjacent to Meadowood Road).

(No request has been made in this application to replace/construct/maintain any fence in the site's Meadowood Road front yard setback on the south side of the subject site).

**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, south, east, and west are developed with single family uses.

**Zoning/BDA History**:

| | |
|---|---|
| 1. BDA 990-271, Property at 9963 Rockbrook Lane (one lot west of the subject site) | On May 15, 2000, the Board of Adjustment Panel C granted requests for special exceptions to the single family use and fence height regulations of 2' and imposed the following conditions: to the single family use special exception: compliance with the submitted site plan is required; and applicant must submit a valid deed restriction prohibiting the additional dwelling unit of the site from being uses as a rental accommodation; and to fence height special exception: 1) In conjunction with retaining the 6 foot high brick/masonry wall, a tree survey or a landscape plan documenting the trees be retained adjacent to the existing wall must be submitted, and 2) a landscape plan documenting the retention of ivy vines on the existing wall must be submitted.<br>The case report stated the requests were made to maintain an existing 6' high brick wall along Walnut Hill Lane and construct/maintain an extension of this wall an additional 90 feet westward along Walnut Hill Lane, and to construct/maintain a pool house/dwelling unit structure on the site. |

| | |
|---|---|
| 2. BDA 045-266, Property at 4722 Walnut Hill Lane (one lot east of the subject site) | On August 17, 2005, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 4' 10" and imposed the submitted site plan and elevation as a condition.<br>The case report stated the request was made to construct and maintain an 8' high solid stucco fence with 8'10" stucco columns and 8' metal gates in the front yard setback on a site that is developed with a single family house. |

**GENERAL FACTS/STAFF ANALYSIS**:

- This request focuses on constructing and maintaining a 9' high solid brick fence to replace an approximately 7' high solid brick fence parallel to Walnut Hill Lane on the north, and an 8' high solid brick to replace an 8' high open picket perpendicular to Walnut Hill Lane on the west adjacent to Meadowood Road on a site developed with a single family home use.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is located on the southeast corner of Meadowood Road and Walnut Hill Lane. The subject site has front yard setbacks on the north and south since the subject site runs from one street to another (Walnut Hill Lane on the north, Meadowood Road on the south). Regardless of how the existing single-family structure is oriented to front southward towards Meadowcreek Road, the site has front yard setbacks on both of these streets since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both of these streets.
- Although the site has two, 40' front yard setbacks, the focus of the applicant's request in this application is only to replace and maintain a fence higher than 4' in the site's Walnut Hill Lane front yard setback on the north. No part of the application is made to address any fence in the site's Meadowood Road front yard setback on the south.
- The applicant has submitted a site plan and elevation of the proposal in the Walnut Hill Lane front yard setback with notations indicating that the proposal reaches a maximum height of 9'.
- The following additional information was gleaned from the submitted site plan related to the proposal in the Walnut Hill Lane front yard setback:
  - The proposal is represented as being approximately 200' in length parallel to Walnut Hill Lane, and approximately 40' in length perpendicular to the Walnut Hill Lane.
  - The proposal fence is represented as being located at a range of 0' – 2' from the front property line, or approximately 8' – 10' from the Walnut Hill Lane pavement line and 46' – 48' from the Meadowood Road pavement line.

- The applicant has submitted a landscape plan in addition to a site plan. The only landscape materials denoted on the street side of the fence on Meadowood Road and Walnut Hill Lane are intermittent rows of George Tabor azaleas.
- Two single family lots/houses front the Walnut Hill Lane replacement fence, neither with fences that appear to exceed 4' in height in their front yard setbacks; one single family lot/house fronts the Meadowood Road replacement fence, a house with an approximately 6' high fence that appears to be the result of a fence height special exception granted by the Board in 2000: BDA 990-271.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 300 feet east and west of the subject site) and noted one other fence that appeared to be in a front yard setback higher than 4' in height – an approximately 8' high solid fence located immediately east of the subject site that appears to be the result of a granted fence height special exception request granted by the Board in 2005: BDA 045-266.
- As of March 9, 2015, 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 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 front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

**Timeline**:

January 12, 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.

February 10, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 11, 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 February 25th deadline to submit additional evidence for staff to factor into their analysis; and the March 6th 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 25, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2015**

APPEARING IN FAVOR: Clay Grasso, 8150 N Central Expwy, M2070, Dallas, TX
Ellen Grasso, 8150 N Central Expwy, M2070, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment, in request No. **BDA 145-031**, on application of Ellen Grasso Isreal, **grant** the request to construct and maintain an **8**-foot high fence in the property's front yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and elevation dated March 18, 2015 is required.

SECONDED: **Johnson**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

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**FILE NUMBER**: BDA 145-034

**BUILDING OFFICIAL'S REPORT:** Application of Kieu Handoko, represented by William Crews, for a special exception to the fence height regulations at 14087 Brookridge Drive. This property is more fully described as Lot 7, Block H/7424, and is zoned R-1/2ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations.

**LOCATION**: 14087 Brookridge Drive

**APPLICANT:** Kieu Handoko
Represented by William Crews

**REQUEST**:

A request for a special exception to the fence height regulations of 4' is made to maintain an 8' high solid cedar wood fence and a 7' high solid wood gate in the one of the site's two required front yards (Spring Valley 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-1/2ac(A) (Single family district ½ acre) |
| North: | R-1/2ac(A) (Single family district ½ acre) |
| South: | R-1/2ac(A) (Single family district ½ acre) |
| East: | R-1/2ac(A) (Single family district ½ acre) |
| West: | R-1/2ac(A) (Single family district ½ acre) |

**Land Use**:

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

**Zoning/BDA History**:

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

**GENERAL FACTS/STAFF ANALYSIS**:

- This request focuses on maintaining a an 8' high solid cedar wood fence and a 7' high solid wood gate in the one of the site's two required front yards (Spring Valley 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 southwest corner of Spring Valley Road and Brookridge Drive. Regardless of how the home on the site is oriented to front eastward to Brookridge Drive and to side northward onto Spring Valley Road, the site has a 40' required front yard along Spring Valley Road, the shorter of the two frontages by approximately 2 feet, which is always deemed the front yard setback on a corner lot in a single-family zoning district; and a 60' required front yard along Brookridge Drive, 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 Brookridge Drive frontage that functions as the front yard is also deemed a front yard setback to maintain the continuity of the established front yard setback established by the lots developed with single family homes south of the site that front/are oriented eastward towards Brookridge Drive.
- The applicant's request in this application is only to maintain a fence higher than 4' in the site's front yard setback on Spring Valley Road – a frontage that functions as is side yard but is a front yard nonetheless because it is approximately 2' shorter than the site's Brookridge Drive frontage. No part of the application is made to address any fence in the site's Brookridge Drive required front yard.
- The applicant has submitted a site plan and elevations of the proposal in the front yard setback with notations indicating that the fence reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 110' in length parallel to the Spring Valley Road and approximately 15' - 30' perpendicular to Spring Valley Road on the east and west sides of the site in this front yard setback.
  - The proposal is represented as being located about 5' – 20' from the Spring Valley Road front property line. (The distance of the fence to the pavement line cannot be determined since the site plan does not make representation of a pavement line).
- The proposal/existing fence is located across from one single family home that does not have a fence in its *side* yard setback along Spring Valley Road.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences along Spring Valley Road that appeared to be above 4' in height and located in a *front* yard setback.
- As of March 9, 2015, a petition signed by 9 neighbors/owners in support has been submitted and no letters have been submitted in opposition.
- 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 site plan and elevation would require the proposal exceeding 4' in height in the Spring Valley Road required front yard to be maintained in the location and of the heights and materials shown on these documents.

**Timeline**:

January 22, 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.

February 10, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 11, 2015: The Board Administrator emailed the applicant 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 February 25th deadline to submit additional evidence for staff to factor into their analysis; and the March 6th 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.

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2015**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Johnson**

I move to grant that the Board of Adjustment grant application **BDA 145-034** 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: **Hounsel**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

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**FILE NUMBER**: BDA 145-035

**BUILDING OFFICIAL'S REPORT:** Application of Marc Daniel Cabrera, represented by Bill Young, for special exceptions to the visual obstruction regulations at 9086 Longmont Drive. This property is more fully described as Lot 22, Block C/7316, and is zoned R-7.5(A), which requires a 20 foot visibility triangle at driveway approaches and at an alley intersection with a street. The applicant proposes to locate and maintain items within required visibility triangles, which will require a special exception to the visual obstruction regulations.

**LOCATION**: 9086 Longmont Drive

**APPLICANT:** Marc Daniel Cabrera
Represented by Bill Young

**REQUESTS**:

Requests for special exceptions to the visual obstruction regulations are made to locate and maintain an 8' high solid cedar fence in the two, 20' visibility triangles on either side of the driveway into the site from McCree Road 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**:

Approval, subject to the following condition:
- Compliance with the submitted site plan and elevation is required.

Rationale:
- The Sustainable Development and Construction Department Project Engineer has no objections to these requests.

- The applicant has substantiated how the location of the proposed fence to be located in the 20' visibility triangles at the driveway into the site from McCree Road would not constitute a traffic hazard.

**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.

**GENERAL FACTS/STAFF ANALYSIS:**

- These requests focus on locating and maintaining an 8' high solid cedar fence in the two, 20' visibility triangles on either side of the driveway into the site from McCree Street 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).
- A site plan and elevations have been submitted indicating portions of a fence located in the two 20' visibility triangles on either side of the driveway into the site from McCree Street.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain portions of an 8' high solid cedar fence located in the two 20' visibility triangles at the driveway into the site from McCree Street 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 in the 20'

drive approach visibility triangles into the site from McCree Street to that what is shown on these documents – an 8' high solid cedar fence.

**Timeline**:

December 29, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 10, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 11, 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 February 25th deadline to submit additional evidence for staff to factor into their analysis; and the March 6th 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."

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

March 6, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2015**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Johnson**

I move to grant that the Board of Adjustment grant application **BDA 145-035** 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: **Hounsel**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

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**FILE NUMBER**: BDA 145-038

**BUILDING OFFICIAL'S REPORT:** Application of John Weninger for a special exception to the landscape regulations at 3121 N. Fitzhugh Avenue. This property is more fully described as a 4,871 square foot unplatted parcel, Block 1/1519 and is zoned PD193 (GR), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION**: 3121 N. Fitzhugh Avenue

**APPLICANT:** John Weninger

**REQUEST**:

A request for a special exception to the landscape regulations is made in conjunction with constructing and maintaining a 2nd floor addition and related stairway structure atop an existing one story office use/structure (123 Divorce Company), and not fully providing required landscaping.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN**:

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

**STAFF RECOMMENDATION**:

Approval, subject to the following conditions:
1. Compliance with the submitted revised alternate landscape plan is required.

2. Any tree planted on the property may be a species that normally reaches a height of less than 30 feet upon maturity.

Rationale:

- The Chief Arborist recommends approval of the submitted revised alternate landscape plan because the proposal for the confined property does not compromise the spirit and intent of the PD 193 landscape regulations.

**BACKGROUND INFORMATION**:

**Zoning:**

| | |
|---|---|
| Site: | PD 193 (GR) (Planned Development District, General Retail) |
| North: | PD 193 (PDS 100) (Planned Development District, Planned Development) |
| South: | PD 193 (GR) (Planned Development District, General Retail) |
| East: | PD 193 (GR) (Planned Development District, General Retail) |
| West: | PD 193 (GR) (Planned Development District, General Retail) |

**Land Use**:

The subject site is developed with a nonconforming structure that is an office use. The area to the north is under development; and the areas to the south, east and west are developed with a mix of residential and office uses.

**Zoning/BDA History**:

| | |
|---|---|
| 1. BDA 134-024, Property located at 3121 N. Fitzhugh Avenue (the subject site) | On November 19, 2014, the Board of Adjustment Panel B took the following actions: 1) granted requests for a special exceptions to the visual obstruction regulations and imposed the following conditions: Compliance with submitted site plan is required, and vegetation in the 20 foot visibility triangle, where the alley meets/intersects with N. Fitzhugh Avenue, must comply with the Dallas Development Code's visual obstruction regulations; 2) granted requests for variances to the front yard setback regulations and imposed the submitted site plan as a condition; and 3) denied a request for a variance to the landscape regulations without prejudice.<br>The case report stated that the requests were made on a site developed with an existing nonconforming structure that is an office use (123 Divorce Company): a variance to the front yard setback regulations of 10' is made to maintain a |

portion of the existing nonconforming structure with an approximately 1,800 square foot building footprint located as close as on the site's N. Fitzhugh Avenue front property line or as much as 10 into this required 10' front yard setback; a variance to the front yard setback regulations of 10' is made to construct, align and maintain a portion of a proposed 2nd floor addition atop the existing nonconforming structure that like the approximately 1,800 square foot building footprint would be located as close as on the N. Fitzhugh Avenue front property line or as much as 10 into this required 10' front yard setback;a variance to the landscape regulations is made to construct and maintain the proposed 2nd floor addition and related stairway structure, and not fully provide required landscaping; and special exceptions to the visual obstruction regulations are made to locate what could be vehicles parked in striped off-street parking spaces required to fulfill the required off-street parking for the office use/structure located in the 45' visibility triangle at the intersection of N. Fitzhugh Avenue and Cole Avenue, and in four, 20' visibility triangles at the two driveways into the site from N. Fitzhugh Avenue; and, according to what is represented on the submitted site plan, to maintain a portion of the existing nonconforming structure located in the 20' visibility triangle at where the alley intersects/meets N. Fitzhugh Avenue.

**GENERAL FACTS/ STAFF ANALYSIS**:

- This request focuses on constructing and maintaining the proposed 2nd floor addition and related stairway structure, and not fully provide required landscaping. More specifically, according to the City of Dallas Chief Arborist, the site does not conform to PD 193 landscape regulation standards related to sidewalks, trees, screening of off-street parking, and landscape site area of the required front yard.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed

by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

- The City of Dallas Chief Arborist states in a memo (see Attachment A) that the request in this case is triggered by proposed new construction of an addition to building height on the site.
- The Chief Arborist notes that the submitted revised alternate landscape site plan is deficient in the following ways:
  1. Sidewalks at a minimum of 6' in width placed 5' – 12' from back of curb.
  2. Large trees in the tree planting zone between 2.5' – 5' from back of curb.
  3. Screening of off-street parking.
  4. A landscape site area of 10 percent and 60 percent of the required front yard containing appropriate general and special planting areas.

  (The proposed plan does not provide any of these requirements).
- The Chief Arborist listed several factors for consideration:
  1. The site at street level is fully developed with a structure and paved surface for parking and maneuvering. The property is long and narrow which provides only one possible location for a tree under the current configuration of parking. This location is on the property and adjacent to parking space #3 and #5 as identified on the submitted site plan. However, the Fitzhugh frontage and this possible location is encumbered with overhear power lines and a school zone signal adjacent to the structure a short distance to the east. The site has two wide driveways restricting plant locations.
  2. It is recommended to support small trees (trees that do not grow over 30 feet in height) as shown for the parking lot, due to direct vertical conflicts with overhear utilities. Although it is preferable to plant a canopy tree to avoid clearance conflicts with the school signal, the potential height growth will place the tree in direct conflict with overheard utilities. A smaller tree would be more suitable when maintained to minimize visibility restrictions with the signal and will be better adapted to the small planting areas, especially adjacent to the building structure.
  3. A very narrow planting bed is provided along the building frontage adjacent to the existing sidewalk. This is mostly kept of small vegetation which can provide for a minor green edge to soften the building frontage with proper maintenance. On the street side of the sidewalk, a one-foot wide strip is maintained with groundcover in front of the building and adjacent to the parking lot between driveways. The plan proposes additional improvements
  4. The only existing permeable area available for planting trees or other vegetation is on the Cole Avenue parkway but this is also restricted by the visibility triangle at the street intersection. The additional small vegetation is acceptable and must be maintained in compliance with city regulations for site visibility and sidewalk clearance per ordinance. However, the Chief Arborist does not recommend approval of any tree in this parkway area for purposes of public safety.
- The Chief Arborist recommends approval of the submitted revised alternate landscape plan because the proposal for the confined property does not compromise the spirit and intent of the PD 193 landscape regulations. The Chief Arborist recommends an added condition be imposed in addressing the potential conflicts with utilities and signal light clearance that being: any tree planted on the

property may be a species that normally reaches a height of less than 30 feet upon maturity.

- The applicant has the burden of proof in establishing the following:
  - The special exception (where a revised alternate landscape plan has been submitted that is deficient in meeting the sidewalk, tree, screening of off-street parking, and landscape site area of the front yard requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of Section 51P-193-126: "Landscape, streetscape, screening, and fencing standards".
- If the Board were to grant this request and impose the staff suggested conditions, the site would be granted exception from full compliance to the sidewalk, tree, screening of off-street parking screening, sidewalk, and front yard requirements of the PD 193 landscape regulations.

**Timeline**:

December 9, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 10, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

February 11, 2015: The Board Administrator emailed the following information to the applicant:

- 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 February 25th deadline to submit additional evidence for staff to factor into their analysis; and the March 6th 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."

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and

Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

March 6, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

March 9, 2015: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2015**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Johnson**

I move to grant that the Board of Adjustment grant application **BDA 145-038** 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 revised alternate landscape plan is required.
- Any tree planted on the property may be a species that normally reaches a height of less than 30 feet upon maturity.

SECONDED: **Hounsel**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

**********

**FILE NUMBER**: BDA 145-007

**BUILDING OFFICIAL'S REPORT:** Application of Suzan Kedron for special exceptions to the pedestrian skybridge standards at 8301 Westchester Drive. This property is more fully described as Lot 6A, Block 5623, and at 8300 Westchester Drive, Tract 1, Block 5623, and are zoned PD-314, which requires that pedestrian skybridge supports must not be located within the public right-of-way, that a pedestrian skybridge must provide clearance above the public right-of-way of at least 18 feet above grade, that the interior passageway must be no greater than 20 feet in width, and must not diverge from a perpendicular angle to the right-of-way by more than 30 degrees. The applicant proposes to construct and maintain a pedestrian skybridge and locate supports within a public right-of-way, reduce the minimum 18 foot clearance above the public right-of-way

to 14 feet, increase the maximum 20 foot interior passageway width to 61 feet, and increase the maximum 30 degree divergance from the perpendicular angle to the right-of-way to 45 degrees, which will require special exceptions to the pedestrian skybridge standards.

**LOCATION**: 8301 Westchester Drive

**APPLICANT:** Suzan Kedron and Jonathan Vinson of Jackson Walker LLP

**REQUESTS**:

Requests for special exceptions to the mandatory pedestrian skybridge standards are made to construct and maintain a pedestrian skybridge over Westchester Drive between Berkshire Street and Luther Lane that would connect an existing retail structure to an existing parking garage:

1. With a clearance above public right-of-way of 14' above grade;
2. With an interior passageway width of 61';
3. With support columns located within the Westchester Drive public right-of-way; and
4. That will diverge from a perpendicular angle to the right-of-way by 45 degrees.

**STANDARD FOR A SPECIAL EXCEPTION TO THE MANDATORY PEDESTRIAN SKYBRIDGE STANDARDS**:

Section 51A-4.217 of the Dallas Development Code states that the board of adjustment may grant a special exception to the pedestrian skybridge standards if the board finds that:

1. Strict compliance with the requirements will unreasonably burden the use of either of the properties;
2. The special exception will not adversely affect neighboring property; and
3. The special exception will not be contrary to the public interest.

**STAFF RECOMMENDATION**:

No staff recommendation is made on this or any request for a special exception to the pedestrian skybridge standards since the basis for this type of appeal is if the board finds that: strict compliance with the requirements will unreasonably burden the use of either of the properties; the special exception will not adversely affect neighboring property; and the special exception will not be contrary to the public interest.

**BACKGROUND INFORMATION**:

**Zoning:**

| | |
|---|---|
| Site: | PD 314 (Planned Development) |
| North: | PD 314 (Planned Development) |
| South: | PD 314 (Planned Development) |
| East: | PD 314 (Planned Development) |
| West: | PD 314 (Planned Development) |

**Land Use**:

The proposed skybridge would connect an existing two story retail structure to an existing one-story parking garage/deck. The areas to the north, east, south, and west are developed with mostly with retail uses.

**Zoning/BDA History**:

| | |
|---|---|
| 1. Z 134-341 (the subject site) | On March 5, 2015, the City Plan Commission recommended approval of an application for a specific use permit for a pedestrian skybridge. (A City Council date for consideration of the SUP and a real estate license will be scheduled after the Board of Adjustment takes action on the requests for special exceptions to the pedestrian skybridge standards). |

**GENERAL FACTS/STAFF ANALYSIS**:

- These requests focus on constructing and maintaining a pedestrian skybridge over Westchester Drive between Berkshire Street and Luther Lane that would connect an existing retail structure to an existing parking garage – a skybridge that would have a clearance above public right-of-way of 14' above grade, an interior passageway of 61', support columns within the Westchester Drive public right-of-way, and that will diverge from a perpendicular angle to the right-of-way by 45 degrees.
- The Dallas Development Code states that the purpose of pedestrian skybridge section of the code is to promote the health, safety, and general welfare of persons and property within the city by providing for the structural integrity of pedestrian skybridges over public right-of-ways; preventing visual obstruction of public right-of-ways and urban landscapes; facilitating the flow of traffic; encouraging use of public skybridges by pedestrians through well designed additions to the existing pedestrian system; minimizing the negative impact of pedestrian skybridges on adjoining properties, communication and utility company facilities, and public street lighting and safety facilities; and establishing standards for construction and maintenance of pedestrian skybridges.
- The Dallas Development Code provides 19 mandatory skybridge provisions of which the applicant seeks special exceptions from the following four:
  1. Pedestrian skybridges must have a clearance above the public right-of-way of at least 18 feet above grade. (The applicant has submitted a site plan and bridge section that indicates the clearance above the public right of way is 14' above grade.)
  2. If the pedestrian skybridge has a length of less than 150 feet, the interior passageway must be no less than 10 feet and no greater than 20 feet in width. (While a site plan has not been submitted to date that appears to indicate a skybridge with an interior passageway of 61 feet, the applicant is requesting dimensions from 28 feet to a maximum of 61 feet).

3. Pedestrian skybridge supports must not be located within the public right-of-way. (The applicant had originally submitted a site plan and bridge section that indicated 5 support columns in the public right-of-way, four on the west side of Westchester Drive, one on the east side of Westchester Drive, however on March 6th, the applicant submitted a revised site plan that However on March 6th, the applicant submitted a revised site plan that changed two items: removal of one of the bridge support columns formerly located on the west side of Westchester, and moving/relocating the bridge column on the east side of Westchester to the south several feet).
4. Pedestrian skybridges must not diverge from a perpendicular angle to the right-of-way by more than 30 degrees). (The applicant has stated on the application that a request to increase the divergence from 30 degrees to 45 degrees).

- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request marked "Has no objections if certain conditions are met" commenting "Bridge column locations within public right-of-way shall be revised to comply with PD 314 and ADA standards with regards to sidewalk and pedestrian clearance. No columns shall be located within roadway or ground level parking spaces within right-of-way."
- The Assistant Director of Transportation Operations with the Department of Street Services has stated among other things in a February 25th email that "if a truck is allowed to have a maximum height of 14' per Texas Transportation Code, our bridges should have a minimum clearance of at least 1', preferably 2' above that height."
- The applicant has the burden of proof in establishing how strict compliance with the skybridge standards (constructing/maintaining a pedestrian skybridge that would: a) have a clearance above public right-of-way of less than 18' above grade; b) have an interior passageway of a maximum of 61'; c) have support columns within the Westchester Drive public right-of-way, and d) that will diverge from a perpendicular angle to the right-of-way by 45 degrees) will unreasonably burden the use of either of the properties; that the special exceptions will not adversely affect neighboring property; and the special exceptions will not be contrary to the public interest.
- If the Board were to grant any or all of these requests, the Board can consider imposing the applicant's submitted revised site plan/elevation as a condition. If the Board were to grant any or all of these requests and impose the applicant's submitted revised site plan/elevation as a condition, any granted exception would be required to be constructed and maintained as shown on any such document.

**Timeline**:

November 20, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 10, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 10, 2014: The Board Administrator contacted the applicant and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 29th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

December 24, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

January 6, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 9, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

January 21, 2015: The Board of Adjustment Panel B conducted a public hearing on this application. The Board Administrator circulated additional written documentation to the Board at the briefing (see Attachment C). This documentation was a letter from the applicant requesting that the Board move to hold the application over until their March 18th public hearing given that "we are continuing to work with our architects and engineers to further refine our plans, and to be able to continue our outreach with other stakeholders in the vicinity of our request." The Board delayed action on this application until their next public hearing to be held on March 18, 2015.

January 30, 2015: The Board Administrator sent a letter to the applicant that noted the decision of the panel, and the March 6th deadline to submit additional evidence to be incorporated into the Board's docket materials.

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the

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

March 6, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment D).

March 6, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request marked "Has no objections if certain conditions are met" commenting "Bridge column locations within public right-of-way shall be revised to comply with PD 314 and ADA standards with regards to sidewalk and pedestrian clearance. No columns shall be located within roadway or ground level parking spaces within right-of-way."

March 11, 2015: The Interim Assistant Director of Sustainable Development and Construction forwarded an email from the Assistant Director of Transportation Operations with the Department of Street Services to the Board Administrator (see Attachment E). The email stated among other things that "if a truck is allowed to have a maximum height of 14' per Texas Transportation Code, our bridges should have a minimum clearance of at least 1', preferably 2' above that height."

**BOARD OF ADJUSTMENT ACTION: JANUARY 21, 2015**

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., Dallas, TX
Robert Dozier, 2000 McKinney, Dallas, TX
Jack O'Brien, 5310 Harvest Hill, Dallas, TX

APPEARING IN OPPOSITION: Laura Miller, 5335 S. Dentwood Dr., Dallas, TX

MOTION: **Gillespie**

I move that the Board of Adjustment in request No. **BDA 145-007**, hold this matter under advisement until **March 18, 2015.**

SECONDED: **Leone**
AYES: 5 – Reynolds, Gillespie, Leone, Hounsel, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2015**

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., Dallas, TX
Dan Feeney, 3819 McKinney Ave., Dallas, TX
Bill Willingham, 6343 Kalani, Dallas, TX
Robert Dozier, 2000 McKinney, Dallas, TX
David Culbertson, 5310 Harvest Hill Rd., Dallas, TX

APPEARING IN OPPOSITION: Michael Jung, 4400 Bank of America Plaza, Dallas, TX

MOTION #1: **Agnich**

I move that the Board of Adjustment, in request No. **BDA 145-007**, on application of Suzan Kedron, **grant** the request to reduce the skybridge clearance above the public right-of-way to **15**-feet above grade, as a special exception to the pedestrian skybridge accessory use standards in the Dallas Development Code, because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property, the special exception will not adversely affect neighboring property, and the special exception will not be contrary to the public interest.

SECONDED: **Hounsel**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

MOTION #2: **Agnich**

I move that the Board of Adjustment, in request No. **BDA 145-007**, on application of Suzan Kedron, **grant** the request to increase the divergence from a perpendicular angle to 45 degrees, as a special exception to the pedestrian skybridge accessory use standards in the Dallas Development Code, because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property, the special exception will not adversely affect neighboring property, and the special exception will not be contrary to the public interest.

SECONDED: **Hounsel**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

MOTION #3: **Agnich**

I move that the Board of Adjustment, in request No. **BDA 145-007**, on application of Suzan Kedron, **grant** the request to increase the maximum interior passageway width of the skybridge to **61**-feet, as a special exception to the pedestrian skybridge accessory use standards in the Dallas Development Code, because our evaluation of

the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property, the special exception will not adversely affect neighboring property, and the special exception will not be contrary to the public interest.

SECONDED: **Hounsel**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

**Break: 3:15 P.M.**
**Resumed: 3:22 P.M**.

MOTION #4: **Agnich**

I move that the Board of Adjustment, in request No. **BDA 145-007**, on application of Suzan Kedron, **grant** the request to install and maintain a maximum of 4 columns for a pedestrian skybridge in a public right-of-way, as a special exception to pedestrian skybridge accessory use standards in the Dallas Development Code, because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property, the special exception will not adversely affect neighboring property, and the special exception will not be contrary to the public interest. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development code:

- Compliance with the submitted revised site plan with elevation dated February 25, 2015 is required. The columns may be moved up to 5 feet on the east side of Westchester.

SECONDED: **Hounsel**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

MOTION #5: **Gillespie**

In the matter of **BDA 145-007**, I move to reconsider the fourth request to place a maximum of four (4) columns in the right-of-way.

SECONDED: **Hounsel**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

MOTION #6: **Gillespie**

I move that the Board of Adjustment in request No. **BDA 145-007**, hold only the request for the four (4) columns in the right-of-way to **April 22, 2015** and instruct staff to re-advertise this matter for a public hearing.

SECONDED: **Johnson**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

**********

**FILE NUMBER**: BDA 145-014

**BUILDING OFFICIAL'S REPORT:** Application of Ed Simons of Masterplan for a special exception to the landscape regulations at 6405 (AKA 6565) Bandera Avenue. This property is more fully described as Lot 8A, Block 4/5464, and is zoned MF-1(A), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION**: 6405 (AKA 6565) Bandera Avenue

**APPLICANT:** Ed Simons of Masterplan

**REQUEST**:

A request for a special exception to the landscape regulations is made to maintain a multifamily use (Bandera Avenue Townhomes), and not fully meet the landscape regulations.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS**:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:
(1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
(2) the special exception will not adversely affect neighboring property; and
(3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:
- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and

- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION**:

Approval, subject to the following condition:

- Compliance with the submitted revised alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan due to the restrictive interior lot conditions. The Chief Arborist concludes that strict compliance with the requirements of Article X would unreasonably burden the use of the property, and that the special exception would not adversely affect neighboring property.

**BACKGROUND INFORMATION**:

**Zoning:**

| | |
|---|---|
| Site: | MF-1(A) (Multifamily) |
| North: | D(A) (Duplex) |
| South: | MF-1(A) (Multifamily)) |
| East: | MF-1(A) (Multifamily)) |
| West: | MF-1(A) (Multifamily) |

**Land Use**:

The site is currently developed with a multifamily use (Bandera Avenue Town Homes). The area to the north is developed with duplex use; and the areas to the east, south, and west are developed with multifamily uses.

**Zoning/BDA History**:

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

**GENERAL FACTS/STAFF ANALYSIS**:

- This request focuses on maintaining a multifamily use (Bandera Avenue Townhomes), and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the existing landscaping on the site and the proposed alternate landscape plan submitted by the applicant representing these conditions is for an exception to the mandatory requirements of site trees, perimeter landscape buffer for residential adjacency, and buffer plant materials.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or

increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.

- The City of Dallas Chief Arborist submitted a memo regarding the applicant's revised request (see Attachment B). The memo states how this request is triggered by the new construction of a multifamily development.
- The Chief Arborist's memo lists the following deficiencies:
  - Site trees: the plan proposes 32 site trees when 45 are required.
  - Perimeter landscape buffer strip and buffer plant groups: No landscaping improvements for the north perimeter buffer and no buffer plant groups when 1 large tree per 50 linear feet of adjacency (or 22 large trees) is required. (A tall solid screen fence provides the only visual buffer between the multifamily use and the adjacent residential uses).
- The Chief Arborist's memo lists the following factors for consideration:
  1. The property exceeds the required number of 29 street trees. The property also has provided two design standards including screening of off-street parking (underground parking) and foundation planting.
  2. According to the applicant, the underground parking structure extends to the north property line and from beneath the building structures. The placement of the large trees, as required by code, would be prohibitive with severely limited soil availability over a structure. This may also be restrictive for structural reasons.
  3. The property was developed under a building project involving multiple properties and addresses which originated in Express Review in November of 2005. The review and inspection process for this address is incomplete. The property is occupied.
  4. Board approval of an alternate landscape plan does not amend the conditions of the tree ordinance regulations which may be applicable to the property, or remove requirements for compliance with city licensing provisions for parkway improvements.
- The City of Dallas Chief Arborist recommends approval of the revised alternate landscape plan due to the restrictive interior lot conditions. The Chief Arborist concludes that strict compliance with the requirements of Article X would unreasonably burden the use of the property, and that the special exception would not adversely affect neighboring property.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the revised alternate landscape plan as a condition to the request, the site would be provided exception from full compliance with the site tree, perimeter landscape buffer, and buffer plant material requirements of Article X: The Landscape Regulations.

**Timeline**:

November 23, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 14, 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 January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 6th 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."

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

March 5, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

March 6, 2015: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2015**

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

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move that the Board of Adjustment, in request No. **BDA 145-014**, on application of Ed Simons, **grant** the request to provide an alternate landscape plan as a special exception to the landscape regulations in Article X of the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance

with the requirements of Article X will unreasonable burden the use of the property, the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council, and the special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised alternate landscape plan is required.

SECONDED: **Johnson**
AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

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MOTION: **Gillespie**

I move to adjourn this meeting.

SECONDED **Agnich**
AYES: 5– Reynolds, Gillespie, Hounsel, Johnson, Agnich
NAYS: 0 –
MOTION PASSED 5 – 0 (unanimously)

**4:05 P.M.** Board Meeting adjourned for **March 18, 2015**

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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.