

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1EN CONFERENCE ROOM E
WEDNESDAY, JUNE 25, 2014**

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

MEMBERS ABSENT FROM BRIEFING: David Wilson, regular member

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Paula Leone, regular member, Scott Housel, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: David Wilson, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator and Acting Board Secretary, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, Phil Erwin, Chief Arborist, Danielle Jeminez, Current Planner

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

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 25, 2014 docket.**

1:00 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B May 21, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 25, 2014

MOTION: Gillespie

I move approval of the **Wednesday, May 21, 2014** Board of Adjustment Public Hearing minutes.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 134-064

REQUEST: To reimburse the filing fee submitted in conjunction with a request for a special exception to the off-street parking regulations

LOCATION: 1441 Robert B. Cullum Boulevard

APPLICANT: Dick Calvert

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

The Dallas Development Code further states:

- The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
- In making this determination, the board may require the production of financial documents.

Timeline:

May 6, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents part of which included a request for a reimbursement of the filing fee (see Attachment A).

May 19, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 20, 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 May 28th deadline to submit additional evidence for staff to factor into their analysis; and the June 13th 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 for the parking special exception request;
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence; and
- the provision from the Dallas Development Code allowing the board to reimburse the filing fee (51A- 1.105 (b)(6)) encouraging the applicant to submit any documentation that shows how payment of the filing fee results in substantial financial hardship to the applicant, - i.e. additional financial documents as in but not limited to copies of 1040's, W-4's, bank statements - all with account numbers redacted.

BOARD OF ADJUSTMENT ACTION: JUNE 25, 2014

APPEARING IN FAVOR: Dick Calvert, 1001 Main Street, Carrollton, Texas
Victor F. Russell, 3701 Maywood, Dallas, Texas

APPEARING IN OPPOSITION: No one

MOTION: Bartos

I move to reimburse the filing fee submitted in conjunction with a request for a special exception to the off-street parking regulations.

SECONDED: Leone

AYES: 4– Reynolds, Gillespie, Leone, Bartos

NAYS: 1 – Hounsel

MOTION PASSED 4 – 1

FILE NUMBER: BDA 134-055

BUILDING OFFICIAL'S REPORT: Application of Robert Kerr for a variance to the maximum lot width at 5435 McCommas Blvd. This property is more fully described as a portion of Lot 5 and an abandoned portion of Dirk Street, Block C/2915, and is zoned CD 9, which limits the maximum lot width to 60 feet. The applicant proposes to plat a

single family residential lot with a lot width of 67.51 feet, which will require a 7.51 foot variance to the maximum lot width regulations.

LOCATION: 5435 McCommas Boulevard

APPLICANT: Robert Kerr

REQUEST:

A variance to the maximum lot width regulations of 7.51 feet is requested to remedy/address a single family residential lot that has existed since the 1930's with a lot width that exceeds the 60' maximum lot width permitted in CD 9 - a zoning district established in 2002 on a site that is developed with a single family home.

STANDARD FOR A VARIANCE:

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, 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.

STAFF RECOMMENDATION:

Approval

Rationale:

- Staff recommends approval of the request since the applicant has addressed how the variance is necessary to permit development of this parcel of land that differs from other parcels of land by its restrictive shape, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same CD 9 zoning.
- The subject site is irregular in shape, and the applicant has provided documentation to show how this feature precludes him from developing it in a manner commensurate with the development of other parcels of land in the same CD 9 zoning. CD 9 restricts lot width to a minimum of 50' and a maximum of 60'. As the applicant's lot width is 67.51', as measured at the front property line by a surveyor, he will not be able to plat the lot to CD 9 lot width regulations.

- Granting this variance would not appear to be contrary to public interest, as it does not negatively impact the intent of CD 9, nor would it offer relief for a self-created hardship.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CD 9—the M Streets Conservation District
<u>North:</u>	CD 9—the M Streets Conservation District
<u>South:</u>	CD 9—the M Streets Conservation District
<u>East:</u>	CD 9—the M Streets Conservation District
<u>West:</u>	CD 9—the M Streets Conservation District

Land Use:

The subject site is developed with a single family home structure. The areas to the north, south, east, and west are developed with single family residential 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 remedying/addressing the existing lot width, a lot which existed prior to the adoption of the M Streets Conservation District (CD 9) in 2002.
- According to DCAD records, the “main improvement” at 5435 McCommas Boulevard is a structure built in 1937 with 1,366 square feet of living area and total area.
- In 2001, when the neighborhood applied to create a conservation district, they wanted to “protect the look and feel of the neighborhood,” which has a high concentration of Tudor style homes, and lot widths were one of several design standards restricted to prevent adversely changing the overall look of the neighborhood.
- Lot widths in CD 9 must be a minimum of 50’, but cannot exceed 60’.
- A site plan has been submitted denoting the lot width, measured at the front property line, as exceeding the maximum lot width allowed in CD 9 by 7.51 feet.
- According to the Building Inspection Senior Plans Examiner/Development Code Specialist, the applicant will be restricted in obtaining building permits, i.e. a fence permit, because his property, as it currently exists, is more than just the current Lot 5. Furthermore, the lot width of his property is over the 60’ maximum as established by CD 9. In addition, the city will not allow him to plat the lot with a width of 60’ because that leaves behind an unusable tract with a width of 7.51’.
- The subject site is also irregular in shape and restricted in area.

- The applicant states that he intends to plat the lot into what the metes and bounds specify.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the lot width 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 CD 9 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 CD 9 zoning classification.
- If the Board were to grant the variance request, the maximum amount the lot width would be allowed to exceed would be 7.51 feet.

Timeline:

- April 24, 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.
- May 19, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 28, 2014: The Board of Adjustment Sustainable Development and Construction Department Current Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the June 2nd deadline to submit additional evidence for staff to factor into their analysis; and the June 13th 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.
- June 10, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the

City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

One comment sheet was submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: JUNE 25, 2014

APPEARING IN FAVOR: Robert Kerr, 5435 McCommas Boulevard, Dallas, Texas

APPEARING IN OPPOSITION: Ted Thompson, 5250 Ridgedale, Dallas, Texas

MOTION #1: Gillespie

I move that the Board of Adjustment, in request No. **BDA 134-055**, on application of Robert Kerr, **grant** a 7.51 feet variance to the maximum lot width regulations regulations 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:

- The main structure on the subject site is limited to a maximum width not to exceed 45 feet.

SECONDED: Leone

AYES: 2 – Gillespie, Leone,

NAYS: 3 – Reynolds, Housel, Bartos

MOTION FAILED 3 – 2

MOTION #2: Bartos

I move that the Board of Adjustment, in request No. **BDA 134-055**, on application of Robert Kerr, **grant** a 7.51 feet variance to the maximum lot width regulations regulations 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.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-061

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin for a special exception to the fence height regulations at 5330 Park Lane. This property is more fully

described as Lot 6A, Block 5/5595, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct/maintain a 9 foot high fence, which will require a 5 foot special exception to the fence height regulations.

LOCATION: 5330 Park Lane

APPLICANT: Robert Baldwin

REQUESTS:

Requests for special exceptions to the fence height regulations of 5' are made to construct and maintain the following on a site developed with a single family home:

- In the Park Lane front yard setback: a 6' high open wrought iron fence and an entryway that includes a 9' high open arched wrought iron entry gate with 8' high masonry columns, and 6' high open wrought iron wing walls with 6' 6" high masonry columns parallel to this street, and a 6' high wood fence perpendicular to this street on the site's northwest corner.
- In the Alva Court front yard setback: an entryway that includes a 7' 6" high open arched wrought iron entry gate with 6' 6" high masonry columns, and 6' high open wrought iron wing walls.

(This application does not include any request to remedy the existing brick wall on the site that exceeds 4' in height in the Park Lane and Alva Court front yard setbacks – a fence that the applicant has represented that he intends to retain and is “grandfathered.”)

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 square feet)
North: R-1ac(A) (Single family district 1 acre square feet)
South: R-1ac(A) (Single family district 1 acre square feet)
East: R-1ac(A) (Single family district 1 acre square feet)
West: R-1ac(A) (Single family district 1 acre 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:

1. BDA 078-081, 5330 Park Lane (the subject site) On June, 25, 2008, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 7' and imposed the submitted revised site plan/elevation document as a condition. The case report stated that the request was made in conjunction with constructing and maintaining 3 arched open decorative iron gates (one gate at 8' in height along Alva Court that includes 7' high columns, and two gates at 10' in height along Park Lane) in the site's 40' front yard setbacks along Park Lane and Alva Court on a site being developed with a single family home.

2. BDA 123-001, 5404 Park Lane (the lot east of the subject site)

On January 16, 2013, the Board of Adjustment Panel B granted requests for a special exception to the fence regulations of 4'. The board imposed the following conditions: compliance with the submitted revised site plan/elevation is required. The case report stated that the requests were made in conjunction constructing and maintaining an 8' high wrought iron fence and gate in the site's 40' front yard setbacks along Alva Court on the west and Holloway Road on the east on a site developed with a single family home).

3. BDA 990-364, 5404 Park Lane (the lot east subject site)

On November 14, 2000, the Board of Adjustment Panel B granted requests for a special exception to the fence regulations of 7' 3" and a special exception to the single family dwelling unit regulations. The board imposed the following conditions: compliance with the submitted site plan and elevation is required; and the applicant must deed restrict the property to prohibit the additional dwelling unit on the site as rental accommodations. The case report stated that the requests were made in conjunction with constructing and maintaining a fence consisting of an 11' 3" high wrought iron gate, a 9' 2" high fence and 10' 3' high brick columns within the 40' front yard setback along Park Lane, Holloway Road, and Alva Court; and to construct and maintain an additional dwelling unit to be used as guest quarters on the site. (The applicant has stated that the current application – BDA 123-001- does not amend any part of the fence height special exception granted by the board in 2000).

4. BDA 09-071, 5323 Park Lane (the lot north of the subject site)

On June 16, 2010, the Board of Adjustment Panel B granted requests for a special exception to the fence regulations of 4' 6". The board imposed the following conditions: compliance with the submitted site plan/elevation document is required.

The case report stated that the requests were made in conjunction with constructing and maintaining an 8' high "masonry/wrought iron" fence/wall (5' wrought iron atop a 3' masonry base) with 8' 6" high columns in the site's Park Lane front yard setback.

5. BDA 92-034, Property at 5323 Park Lane (the lot north of subject site)

On May 12, 1992, the Board of Adjustment granted a request for special exception to the fence height regulations to maintain an 8' high fence on the property and imposed the following conditions: "subject to a new landscape plan, to be submitted for approval by the board at its June 9th hearing. The revised landscape plan should have the following things: 1) clustered or singularly planted, at 25' on center, Dwarf Yaupon trees; and 2) replace some of the Savannah Holly with Dwarf Yaupons which can be planted in the beds or in the parkway. All other proposed landscaping shall remain the same." The case report described how the applicant's representative indicated that the fence would be brick with a concrete base. The wall will be 5' in height and will slope to a 6' 6" height near the gate columns. The height of the columns, including the decorative cut stone cap will be 7' 8". The applicant indicates that this will be the highest point on the fence, and the decorative fixtures will not exceed that height. Hence, the special exception of 3' 8" (The applicant's representative's amended the request)."

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on constructing and maintaining the following on a site developed with a single family home: in the Park Lane front yard setback: a 6' high open wrought iron fence and an entryway that includes a 9' high open arched wrought iron entry gate with 8' high masonry columns, and 6' high open wrought iron wing walls with 6' 6" high masonry columns parallel to this street, and a 6' high wood fence perpendicular to this street on the site's northwest corner; and in the Alva

Court front yard setback: an entryway that includes a 7' 6" high open arched wrought iron entry gate with 6' 6" high masonry columns, and 6' high open wrought iron wing walls.

- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan/elevation of the proposal in the front yard setbacks that reaches a maximum height of 9'.
- The following additional information was gleaned from the submitted site plan:
 - Along Park Lane: the new 6' high open wrought iron fence is approximately 55' in length, approximately on the property line, and approximately 16' from the pavement line; the entryway is approximately 64' in length, ranging from approximately 0 – 10' from property line, and approximately 16' – 26' from the pavement line.
 - Along Alva Court: the entryway is approximately 24' in length, ranging from approximately 0 – 5' from property line, and approximately 16' – 21' from the pavement line.
- There is no single family home that has direct frontage to the proposal on Alva Court since this home "fronts" Park Lane, and one single family home that would have direct frontage to the proposal on Park Lane – an estate with its own board "special excepted" gate and fence/wall above 4' in height.
- The immediate area around the site (particularly on Park Lane) has a number of fences/walls above 4' in height and in the front yard setbacks, most of which appear to have been previously granted by the Board of Adjustment (see the "Zoning/BDA History" section of the case report for further details).
- As of June 16, 2014, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 5' will not adversely affect neighboring property.
- Granting these special exceptions of 5' with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 4' in height in the front yard setbacks to be constructed and maintained in the location and of the heights and materials as shown on this document.

Timeline:

April 25, 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.

May 19, 2014: 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."

May 20, 2014: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 28th deadline to submit additional evidence for staff to factor into their analysis; and the June 13th 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.

June 10, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, 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: JUNE 25, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment grant application **BDA 134-061** 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: Bartos

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-062

BUILDING OFFICIAL'S REPORT: Application of Gregory P. Smith for special exceptions to the fence height, landscape, and visual obstruction regulations, and a variance to the off-street parking regulations at 1808 W. Camp Wisdom Road. This property is more fully described as Lot 1B, Block 2/6923, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet, requires mandatory landscaping, requires a 20 foot visibility triangle at driveway approaches and at alleys where they intersect with a street, and requires that the owner of off-street parking provide screening not less than six feet in height to separate the parking area from a contiguous residential use or vacant lot if either is in an R(A) district and the parking area serves a nonresidential use. The applicant proposes to construct/maintain a 6 foot 7 inch high fence, which will require a 2 foot 7 inch special exception to the fence height regulations, to provide an alternate landscape plan, which will require a special exception to the landscape regulations, to locate/maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations, and to construct/maintain off-street parking for a nonresidential use with residential adjacency and not provide required screening, which will require a variance to the off-street parking regulations.

LOCATION: 1808 W. Camp Wisdom Road

APPLICANT: Gregory P. Smith

REQUESTS:

The following requests had been made on a site that is developed with a church use (Oak Cliff Bible Fellowship):

1. A special exception to the fence height regulations of 2' 7" is requested to maintain a 6' high fence (4' high open metal tube fence atop a 2' high solid base) with columns that reach a maximum height of 6' 7", and a 6' high precast concrete fence in the site's 25' front yard setback along Library Lane;
2. Special exceptions are made to maintain the 6' high fence (4' high open metal tube fence atop a 2' high solid base) the in the two, 20' visibility triangles on either side of the driveway into the site from Library Lane, and the 6' high precast concrete fence in the 20' visibility triangle on the east side of the site at where the alley on the meets Library Lane;
3. A special exception to the landscape regulations is requested to maintain a recently constructed surface parking lot, and not fully meeting the landscape regulations related to the perimeter landscape buffer strip along Library Lane; and
4. A variance to the off-street parking regulations is requested in conjunction with maintaining the surface parking lot, and not fully meeting off-street parking regulations related to required screening of off-street parking on the west side of the property adjacent to the undeveloped land zoned R-7.5(A).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

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.

STANDARD FOR A VARIANCE:

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, 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.

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan/elevation is required.

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has no objections to these requests.
- The applicant has substantiated how the location of the fence located in the 20' visibility triangles at the driveway into the site from Library Lane and at where the alley meets Library Lane does not constitute a traffic hazard.

STAFF RECOMMENDATION (landscape special exception):

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist supports the request because the altered layout shown on the applicant's submitted alternate landscape plan will not adversely affect neighboring property.

STAFF RECOMMENDATION (off-street parking screening variance):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan/elevation is required.

Rationale:

- The subject site is unlike most lots in the R-7.5(A) zoning district in that it is sloped and very irregular in shape. In addition, granting this variance would not appear to be contrary to public interest given that the distance the applicant seeks variance from (not providing the required 6' high solid brick, stone, or concrete masonry, stucco, concrete, or wood wall screening along the west side of a recently constructed surface parking lot) is approximately 55' – 220' to single family zoned vacant lots to the southwest.

Zoning:

- Site: R-7.5(A) (Single family district 7,500 square feet)
- North: R-7.5(A), PD 181, & CR (Single family district, Planned Development, Community Retail)
- 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: TH-2(A) (Townhouse)

Land Use:

The subject site is developed as a church use (Oak Cliff Bible Fellowship). The area to the north is developed with what appears to be a mix of uses and undeveloped land; the area to the east is developed with single family uses; and the areas to the south and west appear to be mostly undeveloped.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA 88-055, 1808 West Camp Wisdom Road (the subject site) | <p>On June 28, 1988, the Board of Adjustment granted “the elimination of the screening fence for off-street parking along the east side of the property line” and “the elimination of the mandatory buffer strip of 10 feet along the property line of the adjacent day care center.” (The Building Inspection Senior Plans Examiner/Development Code Specialist stated that this 1988 request did not provide exception or variance to the portions of the subject site seeking exception and variance in 2014 related to BDA 134-062).</p> |
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GENERAL FACTS/STAFF ANALYSIS (fence height special exception):

- This request focuses on maintaining a 6’ high fence (4’ high open metal tube fence atop a 2’ high solid base) and columns that reach a maximum height of 6’ 7”, and a 6’ high precast concrete fence in the site’s 25’ front yard setback along Library Lane on a site that is developed with a church use.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
- The applicant has submitted a revised site plan/elevation of the proposal in the Library Lane front yard setback, and has submitted an email indicating that the existing fences/proposal reaches a maximum height of 6’ 7”.
- The following additional information was gleaned from the submitted revised site plan:

- The existing fence/proposal is represented as being approximately 340' in length parallel to the street and approximately 30' in length perpendicular to the street on the north and south sides of the site in the front yard setback.
- The existing fence/proposal is represented as being located approximately 4' from the Library Lane front property line or about 15' from the Library Lane pavement line.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4 feet high which appeared to be located in a front yard setback.
- No homes front the proposal/existing fence.
- As of June 16th, 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 2' 7" will not adversely affect neighboring property.
- Granting this special exception of 2' 7" with a condition imposed that the applicant complies with the submitted revised site plan/elevation would require the existing fences/proposal exceeding 4' in height in the Library Lane front yard setback to be maintained in the location and of the heights and materials as shown on this document.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction regulations):

- These requests focus on maintaining maintain the 6' high fence (4' high open metal tube fence atop a 2' high solid base) the in the two, 20' visibility triangles on either side of the driveway into the site from Library Lane, and the 6' high precast concrete fence in the 20' visibility triangle on the east side of the site at where the alley on the meets Library Lane on a site developed with a church use.
- 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 revised site plan/elevation has been submitted indicating portions of the existing 6' high fence (4' high open metal tube fence atop a 2' high solid base) and the existing 6' high precast concrete fence are located in the two 20' visibility triangles on either side of the driveway into the site from Library Lane and in the 20' visibility triangle on the east side of the site at where the alley meets Library Lane.
- The Sustainable Development and Construction Department Senior 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 maintain portions of the existing fences in the three visibility triangles on/at Library Lane does not constitute a traffic hazard.

- Granting these requests with a condition imposed that the applicant complies with the submitted revised site plan/elevation would limit the items in these triangles to that what is shown on this document – a 6’ high fence (4’ high open metal tube fence atop a 2’ high solid base) located two, 20’ visibility triangles on either side of the driveway into the site from Library Lane, and a 6’ high precast concrete fence in the 20’ visibility triangle on the east side of the site at where the alley on the meets Library Lane.

GENERAL FACTS/STAFF ANALYSIS (landscape special exception):

- This request focuses on maintaining a recently added surface parking lot, and not fully meeting the landscape regulations related to the perimeter landscape buffer strip along Library Lane.
- 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 Landscape Regulations of the Dallas Development Code state the following with regard to lots containing a use other than single family or duplex:
 - Perimeter landscape buffer strip: A landscape buffer strip must be provided along the entire length of the portion of the perimeter of the lot where residential adjacency exists, exclusive of driveways and accessways at points of ingress and egress to and from the lot. The buffer strip must be at least 10 feet wide except that: (A) any portion of the buffer strip adjacent to public street frontage need not exceed 10 percent of the lot depth; and (B) any portion of the buffer strip in the front yard and adjacent to the side lot line need not exceed 10 percent of the lot width.
- The applicant has submitted a landscape plan that does not provide the 10 wide mandatory perimeter landscape buffer along Library Lane.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant’s request (see Attachment C). The memo states how this request is triggered by proposed new construction of a parking lot on the site, and how the applicant is seeking a special exception from the perimeter landscape buffer strip along Library Lane.
- The City of Dallas Chief Arborist notes that the parking lot pavement is complete, and that the design and installation was completed prior to staff review for a permit.
- The City of Dallas Chief Arborist notes that the parking lot design and construction was completed while a re-plat of the property was not yet completed, and the parking lot property was still separated from the church property. (The parking lot is considered one distinct lot for full compliance with landscape regulations until the property is re-platted into the greater church property – an artificial lot does not apply).
- The City of Dallas Chief Arborist notes that the submitted alternate landscape plan meets all other requirements of Article X including site trees, street trees, parking lot trees, and two design standards.

- The City of Dallas Chief Arborist supports the request in that he believes that the altered layout will 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 submitted landscape plan as a condition, the site would be granted exception from full compliance to 10 wide mandatory perimeter landscape buffer strip requirements of the Article X: The Landscape Regulations along the Library Lane.

GENERAL FACTS/STAFF ANALYSIS (off-street parking screening variance):

- This request focuses on maintaining a recently added surface parking lot, and not fully meeting off-street parking regulations related to required screening of off-street parking on the west side of the property adjacent to the undeveloped land zoned R-7.5(A).
- The Off-Street Parking Regulations of the Dallas Development Code states the following with regard to “screening provisions for off-street parking”:
 - The owner of off-street parking must provide screening to separate the parking area from a contiguous residential use or vacant lot if either is in an agricultural, single family, or multifamily district and the parking area serves a nonresidential use.
 - Screening for off-street parking required must be a brick, stone, or concrete masonry, stucco, concrete, or wood wall that is not less than six feet in height.
- The applicant has a revised site plan/elevation indicating an open wrought iron fence on the recently constructed surface parking lot for the church use – an open wrought iron fence located adjacent to what appears from an aerial photograph to be vacant lots approximately 55’ – 220’ to the southwest of this surface parking lot.
- The subject site is sloped, irregular in shape, and is (according to the application) 38 acres in area. The site is zoned R-7.5(A).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking screening 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 R-7.5(A) zoning classification; and
 - 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 R-7.5(A) zoning classification.
- If the Board were to grant this variance request to the off-street parking regulations and impose the submitted revised site plan/elevation as a condition, the applicant would be only “varied” from providing the required 6’ high solid brick, stone, or

concrete masonry, stucco, concrete, or wood wall screening of off-street parking on the west side of the property adjacent to vacant undeveloped land zoned R-7.5(A) as shown on this document.

Timeline:

- April 25, 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.
- May 19, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 20, 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 May 28th deadline to submit additional evidence for staff to factor into their analysis; and the June 13th 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.
- June 10, 2014: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised site plan/elevation prepared by the applicant to the Board Administrator (see Attachment A).
- June 10, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.
- June 10, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections.”
- June 11, 2014: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official’s report to the Board Administrator (see Attachment B).

June 16, 2014: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the landscape special exception request (see Attachment C).

BOARD OF ADJUSTMENT ACTION: JUNE 25, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment grant application **BDA 134-062** relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan/elevation is required.
- Compliance with the submitted landscape plan is required.

SECONDED: Bartos

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-064

BUILDING OFFICIAL’S REPORT: Application of Dick Calvert for a special exception to the off-street parking regulations at 1441 Robert B. Cullum Boulevard. This property is more fully described as Lot 17A, Block 1376, and is zoned PD-595 (CC), which requires off-street parking to be provided. The applicant proposes to construct/maintain a structure for restaurant with drive-in or drive-through service, restaurant without drive-in or drive-through service, general merchandise or food store 3500 square feet or less use, and office uses, and provide 68 of the required 90 off-street parking spaces, which will require a 22 space special exception to the off-street parking regulations.

LOCATION: 1441 Robert B. Cullum Boulevard

APPLICANT: Dick Calvert

REQUEST:

A special exception to the off-street parking regulations of 22 spaces is requested to replace an existing restaurant with drive-in or drive-through service use (Two Podners) and develop it and an adjacent vacant lot with a new approximately 5,500 square foot retail/office complex with restaurant with drive-in or drive-through service, restaurant without drive-in or drive-through service, general merchandise or food store 3,500 square feet or less, and office uses (Two Podners, Subway, Pizza Patron, Del Taco, and H&R Block) and provide 68 (or 76 percent) of the 90 off-street parking spaces required by code.

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 22 spaces shall automatically and immediately terminate if and when the mix of restaurant with drive-in or drive-through service, restaurant without drive-in or drive-through service, general merchandise or food store 3,500 square feet or less, and office uses that would normally need no more than 90 required parking spaces is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has indicated that he has no objections to the applicant’s request.
- The applicant has substantiate how the parking demand generated by the mix of restaurant with drive-in or drive-through service, restaurant without drive-in or drive-through service, general merchandise or food store 3,500 square feet or less, and office uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

BACKGROUND INFORMATION:

Zoning:

- Site: PD 595 (CC) (Planned Development, Community Commercial)
- North: CS (Commercial Service)
- South: PD 595 (MF-2(A)) (Planned Development, Multifamily)
- East: PD 595 (CC) (Planned Development, Community Commercial)
- West: PD 595 (CC) (Planned Development, Community Commercial)

Land Use:

The subject site is developed with an existing restaurant with drive-in use (Two Podners) and a vacant lot. The area to the north is Fair Park; the areas to the east and west are developed with retail uses; and the area to the south is developed with a mix of uses (one of which is the MLK DART Rail Transit Station) and vacant land.

Zoning/BDA History:

1. Miscellaneous Item #2, BDA 134-064, Property at 1441 Robert B. Cullum Boulevard (the subject site) On June 25, 2014, the Board of Adjustment Panel B will consider reimbursing the filing fee made in conjunction with this application.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on replacing an existing restaurant with drive-in or drive-through service use (Two Podners) and develop it and an adjacent vacant lot with a

new approximately 5,500 square foot retail/office complex with restaurant with drive-in or drive-through service, restaurant without drive-in or drive-through service, general merchandise or food store 3,500 square feet or less, and office uses (Two Podners, Subway, Pizza Patron, Del Taco, and H&R Block) and provide 68 (or 76 percent) of the 90 off-street parking spaces required by code.

- The Dallas Development Code requires the following off-street parking requirement:
 - Office: one space per 333 spaces of floor area.
 - Restaurant with drive in or drive through service: One space per 100 square feet of floor area.
 - Restaurant without drive in or drive through service: One space per 100 square feet of floor area
 - General merchandise or food store 3500 square feet or less: One space per 200 square feet of floor area.
- The applicant is proposing to provide 68 of the required 90 required off-street parking spaces.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed restaurant with drive-in or drive-through service, restaurant without drive-in or drive-through service, general merchandise or food store 3,500 square feet or less, and office uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 22 spaces (or a 24 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 22 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service, restaurant without drive-in or drive-through service, general merchandise or food store 3,500 square feet or less, and office uses is changed or discontinued, the applicant would be allowed to construct and maintain the proposed structure/center with these uses and provide 68 of the 90 code required off-street parking spaces.

Timeline:

May 6, 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.

May 19, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 20, 2014: The Board Administrator shared the following information with the applicant via email:

- an attachment that provided the public hearing date and panel that will consider the application; the May 28th deadline to submit additional evidence for staff to factor into their analysis; and the June 13th 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.”

June 10, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

June 10, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections.”

BOARD OF ADJUSTMENT ACTION: JUNE 25, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment grant application **BDA 134-064** relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 22 spaces shall automatically and immediately terminate if and when the mix of restaurant with drive-in or drive-through service, restaurant without drive-in or drive-through service, general merchandise or food store 3,500 square feet or less, and office uses that would normally need no more than 90 required parking spaces is changed or discontinued.

SECONDED: Bartos

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: Leone

I move to adjourn this meeting.

SECONDED: Gillespie

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

1:55 P.M. Board Meeting adjourned for **June 25, 2014**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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