

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, OCTOBER 22, 2014**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Paula Leone, regular member, Scott Hounsel, regular member Lorlee Bartos, alternate member and Larry Brannon, alternate member

MEMBERS ABSENT FROM BRIEFING: Sam Gillespie, Panel Vice Chair

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Paula Leone, regular member, Scott Hounsel, regular member Lorlee Bartos, alternate member and Larry Brannon, alternate member

MEMBERS ABSENT FROM HEARING: Sam Gillespie, Panel Vice Chair

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Danielle Jimenez, Planner Phil Erwin, Chief Arborist

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Danielle Jimenez, Planner Phil Erwin, Chief Arborist

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 22, 2014 docket.**

1:05 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B September 17, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: OCTOBER 22, 2014

MOTION: None

The minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

BOARD OF ADJUSTMENT ACTION: October 22, 2014

MOTION: Leone

I move approval of Panel B's 2015 Public Hearing Calendar.

SECONDED: Hounsel

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-095

BUILDING OFFICIAL'S REPORT: Application of Farnaz Lak to enlarge a nonconforming use at 4420 Sycamore Street. This property is more fully described as Lot 4, Block 9/739, and is zoned PD298 (Subarea 9, R-7.5(A)), which limits the legal uses in a zoning district. The applicant proposes to enlarge or maintain the enlargement of a nonconforming multifamily residential use, which will require a request to enlarge a nonconforming use.

LOCATION: 4420 Sycamore Street

APPLICANT: Farnaz Lak

REQUEST:

A request is made to maintain a nonconforming “multifamily” use that according to the applicant was enlarged from 4 units to 6 units without permit.

STANDARD FOR ENLARGING A NONCONFORMING USE:

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STAFF RECOMMENDATION:

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

BACKGROUND INFORMATION:

Zoning:

- Site: PD 298 (Subarea 9, R-7.5(A))H/72 (Planned Development, Single family, historic district)
- North: PD 298 (Subarea 9, R-7.5(A))H/72 (Planned Development, Single family, historic district)
- South: PD 298 (Subarea 9, R-7.5(A))H/72 (Planned Development, Single family, historic district)
- East: PD 298 (Subarea 9, MF-1(A)) H/72(Planned Development, Multifamily, historic district)
- West: PD 298 (Subarea 9, R-7.5(A))H/72 (Planned Development, Single family, historic district)

Land Use:

The subject site is developed as a “multifamily” use. The areas to the north, east, and west are developed with residential uses; and the lot immediately south is undeveloped.

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 the enlargement of a nonconforming “multifamily” use on the subject site, which in this particular case, involves according to the applicant, increasing the original dwelling from 4 units to 6 units without permit.

- The subject site is zoned PD 298 (Subarea 9, R-7.5(A)).
- A “multifamily” use is not permitted in the PD 298 (Subarea 9, R-7.5(A))
- A “multifamily” use could only become a *conforming* use on this property if/once it has been rezoned by the City Council through a public hearing process.
- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- On September 23, 2014, the Building Inspection Senior Plans Examiner/ Development Code Specialist emailed the Board Administrator that the enlargement of this nonconforming use was with regard to it being transitioned from 4 dwelling units to 6 dwelling units with no record found as to when this enlargement may have occurred.
- A copy of a Certificate of Occupancy is included in the case file for a multifamily use (CO #9504181104) issued on April 18, 1995.
- An email is included in this case file written by the Board Administrator to the Board of Adjustment Chief Planner that provides a record of their findings from a search on September 11, 2014 of the archived zoning maps in the 5BN conference room regarding zoning on the property at 4420 Sycamore Street as it related to this application. The findings included the following:
 1. A 1929 zoning map shows the property was zoned “#2 Apartment District - 3 or more dwellings”
 2. A 1965 zoning map shows the property was zoned “MF-2”
 3. A zoning map that appears to be from the mid 80’s shows the property zoned “R-7.5”.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The applicant has submitted a site plan, a floor plan, and elevations. The site plan makes representation of the building footprint on the site; the floor plan makes representation of what appears to be a 6 unit development; and the elevation makes representation of all four sides of the structure on the property.
- The applicant has the burden of proof to establish that the enlargement of the non-conforming use:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.

- If the Board were to grant this request, they can consider imposing as a condition any or all of the applicant's submittals (site plan, floor plan, elevations). If the Board were to grant the request and impose any or all of these submittals as conditions, the enlargement of the nonconforming use would be limited to what is shown on any such document.

Timeline:

August 4, 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.

September 9, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 12, 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 19th 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;
- the section from the Dallas Development Code pertaining to nonconforming uses and structures and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 23, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

September 30, 2014: The Sustainable Development and Construction Historic Preservation Senior Planner emailed the Board Administrator the following comment: "I'm not sure why the "H" overlay for this address didn't pop up under zoning, but it is located within the Peak's Suburban Historic District, meaning that any exterior changes, including additions to accommodate an expansion, need to be reviewed by the Landmark Commission." The applicant responded to the email that was forwarded to her on October 1st with the following response: "Further to Mr. Doty's comment I would like to once again emphasize on the fact that this is not an expansion of the building, exterior changes or making an addition to the building to accommodate an expansion. This is an expansion of the use within the current square footage of the building."

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October 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 Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project 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: OCTOBER 22, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move to grant that the Board of Adjustment grant application **BDA 134-095** 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.

SECONDED: **Leone**

AYES: 3 – Reynolds, Leone, Hounsel,

NAYS: 2 – Brannon, Bartos

MOTION PASSED 3– 2

***Since motion to grant did not get four concurring votes, the motion failed and was pulled from the uncontested docket.**

BOARD OF ADJUSTMENT ACTION: OCTOBER 22, 2014

APPEARING IN FAVOR: Farnaz Lak, 13381 Sorrento Dr., Frisco, TX

APPEARING IN OPPOSITION: No one

MOTION #2: **Brannon**

I move that the Board of Adjustment, in request No. BDA **134-095**, on application of Farnaz Lak, **grant** the request of this applicant for an enlargement of a nonconforming use found in Section 51A-4.704(b)(5) of the Dallas Development Code because the enlargement does not prolong the life of the nonconforming use, the enlargement would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right, and the enlargement will not have an adverse effect on the surrounding area.

SECONDED: Leone

AYES: 4 – Reynolds, Leone, Hounsel, Brannon

NAYS: 1 –Bartos

MOTION PASSED 4 – 1

FILE NUMBER: BDA 134-100

BUILDING OFFICIAL’S REPORT: Application of Karl A. Crawley for a special exception to the fence height regulations at 5813 Park Lane. This property is more fully described as Lot 8A, Block G/5614, 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 and maintain a 6 foot high fence, which will require a 2 foot special exception to the fence height regulations.

LOCATION: 5813 Park Lane

APPLICANT: Karl A. Crawley

REQUESTS:

Requests for special exceptions to the fence height regulations of 2’ are made to maintain an approximately 5’ 4” high open metal picket fence and gates with 66” (or 5’ 6”) high columns in the site’s two front yard setbacks along Park Lane and Douglas Avenue on property 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-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 094-004, Property at 5811 Park Lane (the subject site)

On January 11, 1994, the Board of Adjustment granted a request for a special exception to the fence height regulations of 3', and imposed the submitted site plan and elevation as a condition to the request.

The case report stated that the request was made in conjunction with constructing an open metal fence and gate on Park Lane no higher than 7' in height, and replacing an existing 4' chain link fence along Douglas Avenue with a 6' high vinyl chain link fence.

2. BDA 045-268, Property at 5810 Park Lane (the lot south of the subject site)

On August 16, 2005, the Board of Adjustment Panel A granted a request for a special exception to fence height regulations of 6', and imposed the following condition: compliance with the submitted site plan, landscape plan, and fence elevation is required.

The case report states that the request was made in conjunction with constructing and maintaining an open iron fence (6' 2"), columns (6' 8"), and gates (6'9") along Park Lane and a 10' high tennis court fence along Douglas Avenue.

3. BDA 956-189, Property 5825 Park Lane (the lot east of the subject site)

On April 23, 1996, the Board of Adjustment Panel C granted a request for a special exception to fence height regulations of 4', and imposed the following condition: compliance with the submitted revised site/landscape plan and elevation is required. The case report stated that the original request was made to construct a 6' 8" high solid brick and stone fence with 7' 3" high stone columns and an 8' high entry gate and columns.

4. BDA 989-109, Property at 5834 Park Lane (two lots southeast of the subject site)

On October 20, 1998, the Board of Adjustment Panel B granted a request for a special exception to fence height regulations of 5', and imposed the following condition: compliance with the submitted site plan/elevation is required. The case report stated that the request was made in conjunction with constructing approximately 825 linear feet of a 5.5' – 7.5' high open steel picket fence with 7.5' high solid brick columns and 9' high entry gate columns.

5. BDA 056-111, Property 5508 Desco Drive (the lot north of the subject site)

On May 15, 2006, the Board of Adjustment Panel C granted a request for a special exception to fence height regulations of 3', and imposed the following condition: compliance with the submitted site plan and revised elevation is required. The case report stated that the original request was made to construct and maintain an approximately 6' 6" high open picket fence with 7' high columns in the site's Desco Drive and Douglas Avenue front yard setbacks.

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on maintain an approximately 5' 4" high open metal picket fence and gate with 66" (or 5' 6") high columns in the site's two front yard setbacks along Park Lane and Douglas Avenue on property 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 northeast corner of Park Lane and Douglas Avenue. The site has a 40' front yard setback along Douglas Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 40' front yard setback along Park Lane, 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 Park Lane frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the front yard setback established by the lots developed with single family homes es of the site that front/are oriented southward towards Park Lane.
- The applicant has submitted a site plan that notes "5' iron fencing" and "(7) additional columns (side) 6' HT Stucco w/ cast stone caps."
- The applicant has submitted partial elevations of the proposal in the front yard setbacks denoting that it reaches a maximum height of 66".

- The applicant has written in an email that: 1) some of the posts could be up to six feet; 2) there are no changes to what is existing; and 3) the previous Board case did not mention the pedestrian gate so that is really what is needed for this request.
- Note the in January of 1994, the Board of Adjustment granted a fence height special exception on the subject site (BDA 094-004) to construct an open metal fence and gate on Park Lane no higher than 7' in height, and to replace an existing 4' chain link fence along Douglas Avenue with a 6' high vinyl chain link fence.
- The following additional information was gleaned from the submitted site plan:
 - Along Park Lane: the fence is approximately 145' in length, approximately on the property line.
 - Along Douglas Avenue: the fence is approximately 125' in length, approximately on the property line.

(The distance between the fence and the pavement line could not be detected given that the site plan makes no representation of the pavement lines of either Park Lane or Douglas Avenue).
- There is one single family homes south of the subject site that has direct frontage to the fence on Park Lane, with a fence higher than 4' in its front yard (an approximately 6' high open metal fence behind extensive landscaping) that appears to be a result of an approved fence height special exception request granted by the Board of Adjustment in 2005: BDA 045-268 (see the "Zoning/BDA History" section of this case report for additional details).
- There is one single family homes west of the subject site that have direct frontage to the fence on Douglas Avenue, with a fence higher than 4' in its front yard (an approximately 5' high solid fence) that has no recorded history with the Board of Adjustment.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 300' in all directions from the subject site) and noted several fences that appeared over 4' in height and in front yard setbacks. Most of these fences noted are mentioned earlier in the "Zoning/BDA History" section of this case report.
- As of October 13, 2014, no letters had been submitted in support of or in opposition to the requests.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 2' will not adversely affect neighboring property.
- Granting these special exceptions of 2' with a condition imposed that the applicant complies with the submitted site plan and partial elevations would require the proposal exceeding 4' in height in the front yard setbacks to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

- August 14, 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.
- September 9, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 10, 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 10th 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;
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence".

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October 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 Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project 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: October 22, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment grant application **BDA 134-100** 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 partial elevations is required.

SECONDED: **Leone**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-070

BUILDING OFFICIAL'S REPORT: Application of Abdul Hafeez Khan, represented by Warren Packer, for a special exception to the fence height regulations at 4820 Northaven Road. This property is more fully described as Lot 7, Block 1/6391, and is zoned R-1/2ac(A)(NSO 1), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 13 foot 1 inch high fence, which will require a 9 foot 1 inch special exception to the fence height regulations.

LOCATION: 4820 Northaven Road

APPLICANT: Abdul Hafeez Khan
Represented by Warren Packer

October 22, 2014 Public Hearing Notes:

- The Board Administrator circulated additional written documentation to the Board at the briefing (see Attachment B). This documentation included a revised site plan and elevation submitted by the newly designated applicant's representative on October 17th.

REQUEST:

A request for a special exception to the fence height regulations of 9' 1" is made to construct and maintain a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns and an entryway feature that includes a 12' high vehicular and pedestrian gates with 13' 1" high entry column finials in the site's 75' front yard setback on a site being developed with a single family home.

Note the following:

1. this application is adjacent to a property to the west where the same applicant and owner seeks a similar fence height special exception from Board of Adjustment Panel B on August 20th: BDA 134-071; and
2. as of October 13, 2014, the applicant's representative had submitted no additional or new information to staff.

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)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
North: R-1/2 ac(A) (Single family district ½ acre)
South: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
East: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
West: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)

Land Use:

The subject site is being developed with a single family home. The areas to the north, south, and west are developed with single family uses; the area to the east (and the subject site of BDA 134-071) is undeveloped.

Zoning/BDA History:

1. BDA 134-071, Property at 11217 Strait Lane (the lot immediately east of the subject site) On August 20, 2014, the Board of Adjustment Panel B will consider requests for special exceptions to the fence height regulations of 9' 1" to construct/maintain a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns and an entryway feature that includes 12' high vehicular and pedestrian gates with 13' 1" high entry column finials
2. BDA 001-123, Property at 4821 Northaven Road (the lot immediately north of the subject site) On December 12, 2000, the Board of Adjustment Panel A granted a request to the fence height special regulations of 4'. The board imposed the following conditions with the request: compliance with the elevation and a revised site plan that shows the location of the fence behind the shrub is required; and the retention of the approximately 8 foot high Japanese Ligustrum shrubs now existing on the property, (or its replacement with similar species) between the street curb and the proposed fence. The case report states the request was made to construct and maintain a 6' high open wrought iron fence, a 6' chain link fence, 7' high stone columns, and two 8' high wrought iron entry gates.
3. BDA 85-145, Property at 4719 Northaven Road (two lots northwest of the subject site) On May 14, 1985, the Board of Adjustment denied a request for a "front yard variance" of 2' 6" without prejudice. The case report

states the request was made to construct a masonry fence with wrought iron gates 6' 6" in height.

4. BDA 92-001, Property at 11220 Strait Lane (two lots east of the subject site)

On February 11, 1992, the Board of Adjustment granted a request for a fence height special exception of 4' to maintain a 6' fence with 8' columns and gates, and imposed the "submitted Landscape Plan "B"" as a condition to the request.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns and an entryway feature that includes 12' high vehicular and pedestrian gates with 13' 1" high entry column finials in the site's 75' front yard setback on a site being 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 applicant has submitted a site plan and elevation of the proposal in the front yard setbacks that reaches a maximum height of 13' 1".
- The following additional information was gleaned from the submitted site plan:
 - The fence is approximately 450' in length, approximately 4' from the property line, and approximately 12' from the pavement line; the gate is approximately 12' from the property line, and approximately 20' from the pavement line.
- There are two single family homes that have direct frontage to the proposal, one of which appears to have fence in its front yard – a fence that appears to be a result of a granted fence height special exception from 2000: BDA 001-123 (see the "Zoning/BDA History" section of this case report for additional details).
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 300' east and west of the subject site) and noted no other visible fences higher than 4' in a front yard setback other than the one previously mentioned directly north of the subject site.
- One letter had been submitted in support of the request and 16 letters had been submitted in opposition by/at the August 20th public hearing.
- As of October 13, 2014, no additional letters had been submitted in support of the request and 3 additional letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 9' 1" will not adversely affect neighboring property.
- Granting this special exception of up to 9' 1" 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:

- June 16, 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.
- July 15, 2014: The Interim Assistant Director of Sustainable Development and Construction acting on behalf of 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.”
- July 15, 2014: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 30th deadline to submit additional evidence for staff to factor into their analysis; and the August 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 5, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, 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.
- August 4, 2014: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- August 20, 2014: The Board of Adjustment Panel B held a public hearing on this application and delayed action on this application until October 22, 2014 in order for the applicant to meet with neighboring property owners.

August 28, 2014: The Board Administrator sent a letter to the applicant's representative that noted the decision of the panel, the September 26th deadline to submit additional evidence for staff review and the October 10th deadline to submit additional evidence to be incorporated into the Board's docket materials.

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October 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 Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project 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: AUGUST 20, 2014

APPEARING IN FAVOR: Warren Packer, 1680 Prince William Lane, Frisco, TX

APPEARING IN OPPOSITION: Shelton Hopkins, 4707 Crooked LN, Dallas, TX
Judy Askew, 4719 Northaven Rd., Dallas, TX
Christopher Center, 4811 Northaven Rd., Dallas, TX
Kevin Bride, 4933 Mangold Cr., Dallas, TX
Bill Woodall, 4821 Northaven, Dallas, TX
Barbara Hannon, 4745 Crooked LN, Dallas, TX
Pat McBride, 4933 Mangold, Dallas, TX

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 134-070**, hold this matter under advisement until **October 22, 2014**.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: OCTOBER 22, 2014

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Shelton Hopkins, 4707 Crooked LN, Dallas, TX
Christopher Center, 4811 Northaven Rd., Dallas, TX
Jack Dugan, 4618 Crooked Lane, Dallas, TX

MOTION: Hounsel

I move that the Board of Adjustment in Appeal No. **BDA 134-070**, hold this matter under advisement until **November 19, 2014**.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-071

BUILDING OFFICIAL’S REPORT: Application of Abdul Khan, represented by Warren Packer, for a special exception to the fence height regulations at 11217 Strait Lane. This property is more fully described as Lot 4A, Block 1/6391, and is zoned R-1/2ac(A)(NSO 1), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 13 foot 1 inch high fence in a required front yard, which will require a 9 foot 1 inch special exception to the fence height regulations.

LOCATION: 11217 Strait Lane

APPLICANT: Abdul Khan
Represented by Warren Packer

October 22, 2014 Public Hearing Notes:

- The Board Administrator circulated additional written documentation to the Board at the briefing (see Attachment A). This documentation included a revised site plan and elevation submitted by the applicant’s newly designated representative on October 17th.

REQUESTS:

Requests for special exceptions to the fence height regulations of 9’ 1” are made to construct and maintain the following on a site undeveloped site:

1. In the Northaven Road front yard setback: a 7’ high fence (4’ high open metal fence atop a 3’ high solid base) with approximately 8’ high columns in the site’s 75’ front yard setback.
2. In the Strait Lane front yard setback: a 7’ high fence (4’ high open metal fence atop a 3’ high solid base) with approximately 8’ high columns and an entryway feature that includes 12’ high vehicular and pedestrian gates with 13’ 1” high entry column finials.

Note the following:

- this application is adjacent to a property to the west where the same applicant and owner seeks a similar fence height special exception from Board of Adjustment Panel B on August 20th: BDA 134-070; and
- as of October 13, 2014, the applicant's representative had submitted no additional or new information to staff.

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.

Zoning:

- Site: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
- North: R-1/2 ac(A) (Single family district ½ acre)
- South: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
- East: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)
- West: R-1/2ac (A)(NSO 1) (Single family district ½ acre, Neighborhood Stabilization Overlay)

Land Use:

The subject site is undeveloped. The areas to the north, south, and east are developed with single family uses; the area to the west (and the subject site of BDA 134-070) is being developed with a single family home.

Zoning/BDA History:

- | | |
|---|---|
| 1. BDA 134-070, Property at 4820 Northaven (the lot immediately west of the subject site) | On August 20, 2014, the Board of Adjustment Panel B will consider a request for special exception to the fence height regulations of 9' 1" to construct and maintain a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns and an entryway feature that includes a 12' high vehicular and pedestrian gates with 13' 1" high entry column finials in the site's 75' front yard setback on a site being developed with a single family home |
| 2. BDA 001-123, Property at 4821 | On December 12, 2000, the Board of |

Northaven Road (the lot immediately northwest of the subject site)

Adjustment Panel A granted a request to the fence height special regulations of 4'. The board imposed the following conditions with the request: compliance with the elevation and a revised site plan that shows the location of the fence behind the shrub is required; and the retention of the approximately 8 foot high Japanese Ligustrum shrubs now existing on the property, (or its replacement with similar species) between the street curb and the proposed fence. The case report states the request was made to construct and maintain a 6' high open wrought iron fence, a 6' chain link fence, 7' high stone columns, and two 8' high wrought iron entry gates.

3. BDA 85-145, Property at 4719 Northaven Road (three lots northwest of the subject site)

On May 14, 1985, the Board of Adjustment denied a request for a "front yard variance" of 2' 6" without prejudice. The case report states the request was made to construct a masonry fence with wrought iron gates 6' 6" in height.

4. BDA 92-001, Property at 11220 Strait Lane (the lot immediately east of the subject site)

On February 11, 1992, the Board of Adjustment granted a request for a fence height special exception of 4' to maintain a 6' fence with 8' columns and gates, and imposed the "submitted Landscape Plan "B"" as a condition to the request.

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on constructing and maintaining the following in the two front yard setbacks for the site located at the southwest corner of Northaven Road and Strait Lane on a site being developed with a single family home:
 - in the Northaven Road front yard setback a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns; and
 - in the Strait Lane front yard setback: a 7' high fence (4' high open metal fence atop a 3' high solid base) with approximately 8' high columns and an entryway feature that includes 12' high vehicular and pedestrian gates with 13' 1" high entry column finials.
- 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 and elevation of the proposal in the front yard setbacks that reaches a maximum height of 13' 1".
- The following additional information was gleaned from the submitted site plan:
 - Along Northaven Road: The fence is approximately 150' in length, approximately 4' from the property line, and approximately 12' from the pavement line.

- Along Strait Lane: the fence is approximately 120' in length, approximately 4' from the property line, and approximately 18' from the pavement line; the gate is approximately 12' from the property line, and approximately 24' from the pavement line.
- There is one single family home that has direct frontage to the proposal on Northaven Road and one single family home that has direct frontage to the proposal on Strait Lane, neither of which have visible fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 300' north, south, east, and west of the subject site) and noted one visible fence higher than 4' in a front yard setback: an approximately 6' high fence immediately northwest of the subject site that appears to be a result of a granted fence height special exception from 2000: BDA 001-123 (see the "Zoning/BDA History" section of this case report for additional details).
- One letter had been submitted in support of the request and 15 letters had been submitted in opposition by/at the August 20th public hearing.
- As of October 13, 2014, no additional letters had been submitted in support of the request and 3 additional letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 9' 1" will not adversely affect neighboring property.
- Granting these special exceptions of up to 9' 1" 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 setbacks to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

- June 16, 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.
- July 15, 2014: The Interim Assistant Director of Sustainable Development and Construction acting on behalf of the Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 15, 2014: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 30th deadline to submit additional evidence for staff to factor into their analysis; and the August 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 5, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the

Sustainable Development and Construction Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, 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.

August 20, 2014: The Board of Adjustment Panel B held a public hearing on this application and delayed action on this application until October 22, 2014 in order for the applicant to meet with neighboring property owners.

August 28, 2014: The Board Administrator sent a letter to the applicant's representative that noted the decision of the panel, the September 26th deadline to submit additional evidence for staff review and the October 10th deadline to submit additional evidence to be incorporated into the Board's docket materials.

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October 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 Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project 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: AUGUST 20, 2014

APPEARING IN FAVOR: Warren Packer, 1680 Prince William Lane, Frisco, TX

APPEARING IN OPPOSITION: Shelton Hopkins, 4707 Crooked LN, Dallas, TX
Judy Askew, 4719 Northaven Rd., Dallas, TX
Christopher Center, 4811 Northaven Rd., Dallas, TX
Kevin Bride, 4933 Mangold Cr., Dallas, TX
Bill Woodall, 4821 Northaven, Dallas, TX
Barbara Hannon, 4745 Crooked LN, Dallas, TX
Pat McBride, 4933 Mangold, Dallas, TX

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 134-071**, hold this matter under advisement until **October 22, 2014**.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: OCTOBER 22, 2014

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Shelton Hopkins, 4707 Crooked LN, Dallas, TX
Christopher Center, 4811 Northaven Rd., Dallas, TX
Jack Dugan, 4618 Crooked Lane, Dallas, TX
Mark Hannon, 4745 Crooked Lane, Dallas, TX

MOTION: Hounsel

I move that the Board of Adjustment in Appeal No. **BDA 134-071**, hold this matter under advisement until **November 19, 2014**.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-088

BUILDING OFFICIAL’S REPORT: Application of Parker Williams for a variance to the side yard setback regulations at 5027 Maple Springs Boulevard. This property is more fully described as Lot 4, Block E/2331, and is zoned PD193 (R-7.5), which requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a structure and provide a 0 foot setback, which will require a 5 foot variance to the side yard setback regulations.

LOCATION: 5027 Maple Springs Boulevard

APPLICANT: Parker Williams

October 22, 2014 Public Hearing Notes:

- Neighboring property owners submitted written documentation to the Board at the public hearing.

REQUEST:

A variance to the side yard setback regulations of 5' is requested to modify and maintain an approximately 320 square foot carport structure attached to a single-family home, part of which is located in the site's southeastern 5' side yard setback.

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:

Denial

Rationale:

- The applicant has not substantiated how the features of the flat, rectangular shaped, and approximately 7,700 square foot lot precludes him from developing it in a manner commensurate with other developments found on similarly-zoned PD 193 (R-7.5) lots.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on modifying and maintaining an approximately 324 square foot carport structure attached to a single-family home, part of which is located in the site's southeastern 5' side yard setback.
- A 5' side yard setback is required in the PD 193 (R-7.5) zoning district.
- The applicant has submitted a site plan and an elevation indicating the location of the carport on the site's southeastern side property line of 5' into the required 5' side yard setback.
- The following information was gleaned from the submitted site plan:
 - The carport structure is represented to be 36' in length and 8' 9" in width (approximately 324 square feet in total area) of which approximately 180 square feet (or approximately half) is located in the southeastern side yard setback.
- The following information was gleaned from the submitted elevation:
 - The carport structure is represented to be approximately 10.5' in height with steel posts, steel rafters, a metal roof, and a hardi board one hour siding.
- The subject site is flat, rectangular in shape, and approximately 140' x 55' (or 7,700 square feet) in area. The site is zoned PD 193 (R-7.5).
- The Board Administrator conducted a field visit of the area approximately 300 feet north and south of the subject site and noted no other carport structures that appeared to be located in a side yard setback.
- According to DCAD records, the "main improvement" at 5027 Maple Springs Road is a structure with 2,143 square feet of living area/total area in area built in 1948 with the following "additional improvement": pool.
- If this property were in an R-7.5(A) zoning district, the applicant could have made application for a special exception to the side yard setback regulations for a carport where the applicant would have had the burden of proof in establishing that granting this special exception to the side yard setback regulations would not have a detrimental impact on surrounding properties.
- However, because the subject site is zoned PD 193 (R-7.5), the applicant must seek a variance to the side yard setback regulations to maintain the carport structure in the side yard where the applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope,

that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (R-7.5) zoning classification.

- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 (R-7.5) zoning classification.
- The applicant has submitted information indicating that his total living area and additional improvements at approximately 2,400 square feet is slightly less than the average of 11 other properties he found in the same zoning district with an average of approximately 3,200 square feet.
- Typical conditions that staff suggests for requests for special exceptions to side yard setback regulations for carports are as follows:
 1. Compliance with the submitted site plan and elevation is required.
 2. The carport structure must remain open at all times.
 3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
 4. All applicable building permits must be obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.
- If the Board were to grant this *variance* request with conditions mentioned above typically imposed with a carport special exception, the structure in the side yard setback would be limited to what is shown on these documents– which is a structure to be modified and located on the site’s southeastern side property line (or 5’ into this 5’ side yard setback).

Timeline:

- June 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.
- July 15, 2014: The Interim Assistant Director of Sustainable Development and Construction acting on behalf of the Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 19, 2014: The Board Administrator informed the applicant that his application would be scheduled for the next available hearing once the Building Inspection Senior Plans Examiner/Development Code Specialist had forwarded it to him as complete and amended from what was originally applied for as a special exception to the side yard setback regulations.
- September 10, 2014: The Board Administrator emailed the following information to the applicant:
- an attachment that provided the public hearing date and panel that will consider the application; the September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 10th 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.”

September 24 &
26, 2014:

The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

October 7, 2014:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October 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 Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project 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: OCTOBER 22, 2014

APPEARING IN FAVOR: Parker Williams, 5027 Maple Springs Boulevard, Dallas, TX

APPEARING IN OPPOSITION: Stephen G. Linville, 5023 Maple Springs Boulevard, Dallas, TX
 Joyce Ann Graff, 2934 Maple Springs Boulevard, Dallas, TX
 Myron Dornick, 5026 Maple Springs Boulevard, Dallas, TX
 Dr. Mark Wald, 5030 Maple Springs Boulevard, Dallas, TX

MOTION: **Leone**

I move that the Board of Adjustment, in request No. **BDA 134-088**, on application of Parker Williams, **deny** the side yard setback variance **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant, or was a self-created or personal hardship.

SECONDED: **Bartos**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-093

BUILDING OFFICIAL'S REPORT: Application of Brian Rutt for a variance to the landscape regulations at 1414 (aka: 1420) Dragon Street. This property is more fully described as part of Lot 1, Block 16/6846, and is zoned PD621 (Subdistrict 1), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a variance to the landscape regulations.

LOCATION: 1414 (aka: 1420) Dragon Street

APPLICANT: Brian Rutt

October 22, 2014 Public Hearing Notes:

- The Board Administrator circulated additional written documentation to the Board at the briefing (see Attachment B).

REQUEST:

A variance to the landscape regulations is made to complete and maintain a recent 2nd floor addition to an existing circa 1950's structures/suites being redeveloped into restaurant/bar and office uses, and not fully meet the landscape regulations.

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:

Denial

Rationale:

- While the subject site is unique and different from most lots in the PD 621 zoning district in that it is of an irregular/virtually triangular shape, the applicant has not substantiated how granting this variance is not needed to relieve a self-created or personal hardship since the applicant's second floor addition is what manifested the landscape requirements to this property.

BACKGROUND INFORMATION:

Zoning:

Site: PD 621 (Planned Development, Subdistrict1)
North: PD 621 (Planned Development, Subdistrict1)
South: PD 621 (Planned Development, Subdistrict1)
East: PD 621 (Planned Development, Subdistrict1)
West: PD 621 (Planned Development, Subdistrict1)

Land Use:

The site is currently developed with structures that according to DCAD were built in 1951. According to the applicant, he recently added a 2nd floor atop one of the suites on the site in conjunction with his plans to transition what had been a structure with office and gallery uses to office and restaurant/bar uses. The area to the north is developed with a mixed use development; and the areas to the east, south, and west appear mostly developed as office/warehouse 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 completing and maintaining a recent 2nd floor addition to an existing circa 1950's structure/suite being redeveloped into restaurant/bar and office uses, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the proposed plan complies with no required landscape standards of PD 621, Subdistrict 1, for a floor area expansion of less than 50 percent.
- 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.
- Given specific provisions of the landscape provisions of PD No. 621, the applicant can only seek these leniencies from the board of adjustment by requesting a

variance to the landscape regulations within this PD as opposed to the more typical *special exception* to the landscape regulations.

- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states this request is triggered since the owner has increased the story height of a building.
- The Chief Arborist's memo states the deficiencies in this case are that the proposed plan complies with no required landscape standards of PD 621, Subdistrict 1, for a floor area expansion of less than 50 percent.
- The Chief Arborist's memo lists the following factors for consideration:
 1. PD 621 landscape requirements include the following:
 - Street trees: One street tree per 25 feet of street frontage with a minimum of one. (This would require 4 street trees).
 - Subdistrict 1 General Requirements (that are triggered by the story height increase): Site trees (minimum of 4 trees required, none clearly provided); parking lot trees (not applicable); and design standards (two are required, none are provided).
 2. PD 621 additional standards for non-compliance on-site:
 - PD 621 also provides for an "open space fund" for if a property owner cannot plant all of the required trees on the building site – in these situations, the property owner shall comply with this requirement for no more than 50 percent of the required trees. (This measure would only account for only a portion of the overall landscape deficiency for the property).
 - For landscaping in the right-of-way, the City Council has not revoked a right-of-way landscape permit or private license agreement therefor the owner is required to comply with right-of-way landscape requirements if applicable.
 3. Non-required factors to consider in evaluation:
 - Landscaping on the rooftops is considered in this district where applicable. A landscape plan must accompany any application for a building permit to expand floor area if the expansion is over 50 percent for a non-residential structure. But this case does not required compliance with this additional provision.
 - Landscaping does not account for Architectural Design Guidelines or Site Design Requirements.
 - The variance standards apply for this case due to the non-Article X landscape requirements.
- While the Chief Arborists supports the reduced landscape based on how he feels that the variance is not contrary to public interest when owing to special conditions, a literal enforcement of this chapter results in unnecessary hardship and that the variance would permit developed of a specific parcel of lands by it restrictive area and shape, he recommends denial of the request since the applicant has not substantiated how the variance is not needed to relieve a self-created or personal hardship with the height addition that manifested the landscape requirements to this property.
- The site is flat, irregular in shape, and is approximately 0.117 acres (or approximately 5,100 square feet) in area. The site is zoned PD 621 (Subarea 1).
- According to DCAD records, the "improvements" at 1414 Dragon Street is a 4,291 square foot "restaurant" built in 1951. According to DCAD records, the

“improvements” at 1420 Dragon Street is a 1,346 square foot “office/showroom ” built in 1951.

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the landscape regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 621 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 PD No. 621 zoning classification.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be “varied” from all required landscape standards of PD No. 621, Subdistrict 1, as shown on this submitted alternate landscape plan.

Timeline:

July 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.

September 9, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 10, 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 10th 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.”

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October 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 Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project

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

October 10, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: OCTOBER 22, 2014

APPEARING IN FAVOR: Melissa Kingston, 5301 Spring Valley Road, Dallas, TX
Santos Martinez, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: Shelly Stanzel, 154 Glass Street, Dallas, TX
Don Sallinger, 15150 Preston Road, Dallas, TX
Richard Stanzel, 315 Cole Street, Dallas, TX
Stanley Fagin, 14339 Regency Place, Dallas, TX
Robert Blankenship, 4851 JBJ Fwy, Dallas, TX

MOTION: **Bartos**

I move that the Board of Adjustment in Appeal No. **BDA 134-093**, hold this matter under advisement until **November 19, 2014**.

SECONDED: **Hounsel**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: **Leone**

I move to adjourn this meeting.

SECONDED: **Hounsel**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

3:10 P.M. Board Meeting adjourned for **October 22, 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.