

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
MONDAY, DECEMBER 15, 2014**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Danielle Jimenez, Planner, Donna Moorman, Chief Planner, Neva Dean, Interim Asst. Director and Trena Law, Board Secretary

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

11:07 a.m. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **December 15, 2014** docket.

1:01 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel B November 17, 2014 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 134-075

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel C's favorable action on a request for a special exception to the off-street parking regulations of 161 parking spaces granted by Board of Adjustment Panel C on August 18, 2014.

LOCATION: 8333 Douglas Avenue

APPLICANT: Maxwell Fisher of Masterplan

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

- The Dallas Development Code states:
 - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files from and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
 - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable

action unless it makes a *specific finding* based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

Timeline:

August 18, 2014: The Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 161 spaces and imposed the following condition to this request: The special exception of 161 spaces shall automatically and immediately terminate if and when the mix of office and financial institution with drive-in window uses that would normally need no more than 1,791 required parking spaces is changed or discontinued (see Attachment A).

December 8, 2014: The applicant sent a letter to the Board Administrator requesting an extension of the time period in which to make application for a building permit or certificate of occupancy (see Attachment B).

December 8, 2014: The Board Administrator emailed the applicant acknowledging his request for the Board to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days that the applicant had to do so from the August 18, 2014 favorable action (see Attachment C). The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date of the request; and 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;
- an attachment of materials related to BDA 134-075; and

The Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

BOARD OF ADJUSTMENT ACTION: DECEMBER 15, 2014

APPEARING IN FAVOR: Maxwell Fisher, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move that the Board of Adjustment extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months

beyond the 180 days from the Board of Adjustment Panel C's favorable action on a request for a special exception to the off-street parking regulations.

SECONDED: Coulter

AYES: 5 – Richardson, Carreon, Coulter, Schulte, Beikman

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-060

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin to enlarge a nonconforming use at 200 Rock Island Street (AKA 300 Rock Island Street). This property is more fully described as part of Lot 22, Block 65/415, and is zoned PD 784 (Mixmaster Riverfront), which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming tower/antenna for cellular communication use, which will require a request to enlarge a nonconforming use.

LOCATION: 200 Rock Island Street (AKA 300 Rock Island Street)

APPLICANT: Robert Baldwin

REQUEST:

A request is made to enlarge a nonconforming "tower/antenna for cellular communication" use by increasing the height of the existing monopole tower from 80' to 150'.

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:

<u>Site:</u>	PD 784 (Mixmaster Riverfront) (Planned Development)
<u>North:</u>	PD 784 (Mixmaster Riverfront) (Planned Development)
<u>South:</u>	PD 784 (Mixmaster Riverfront) (Planned Development)
<u>East:</u>	PD 784 (Mixmaster Riverfront) (Planned Development)
<u>West:</u>	PD 784 (Mixmaster Riverfront) (Planned Development)

Land Use:

The subject site is developed as nonconforming “tower/antenna for cellular communication” use. The areas to the north and west are undeveloped, the area to the east is developed with vacant retail use; and the area to the south is developed with commercial use.

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 enlarging a nonconforming “tower/antenna for cellular communication” use by increasing the height of the existing monopole tower from 80’ to 150’.
- The subject site is zoned PD 784 (Mixmaster Riverfront).
- A “tower/antenna for cellular communication” use is not permitted in PD 784 (Mixmaster Riverfront).
- A “tower/antenna for cellular communication” 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.
- A document entitled “Appeal for a special exception to enlarge a nonconforming use” is included in the case file that lists the following:
 - Property address: 200 Rock Island Street (AKA 300 Rock Island Street)
 - Nonconforming use being appealed: tower/antenna for cellular communication
 - Reason the use is considered as nonconforming: change in zoning to PD 784
 - Current zoning on the property on which the use is located: PD 784 (Mixmaster Riverfront)

- Previous zoning of the property on which the use is located: IM
- Date that the nonconforming use became nonconforming: 09-24-08
- A copy of a Certificate of Occupancy is included in the case file for a “radio, television, or microwave tower (CO #9205111008) issued on August 7, 1992.
- 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 and a “compound elevations” document. The site plan makes representation of the “existing 80’ monopole tower” in the same location as the “modified 150’ monopole tower” on the site. The submitted elevation makes a representation of the 150’ high monopole tower inside and outside fence from Rock Island Street.
- The applicant has stated that the zoning prior to the current PD 784 zoning was IM Industrial Manufacturing; and that if the property was still zoned IM, he would have been eligible to request an SUP (Specific Use Permit) for the proposed 150’ monopole since the maximum height limit in this zoning district was 110’. The applicant also states that prior to 1992 and the creation of the tower/antenna for cellular communication use, the cell tower would have been allowed to be constructed at any legal height due to the classification as a Utility and Public Service use within 51A-4.212.
- 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, elevation). 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:

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

November 12, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 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 November 26th deadline to submit additional evidence for staff to factor into their analysis; and the December 5th 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.

November 25, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

December 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. 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 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: DECEMBER 15, 2014

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 134-060**, hold this matter under advisement until **February 19, 2015**.

SECONDED: **Schulte**

AYES: 5 – Richardson, Carreon, Coulter, Schulte, Beikman

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-101D

BUILDING OFFICIAL'S REPORT: Application of Karl A. Crawley for a special exception to the fence height regulations at 4047 Cochran Chapel Road. This property is more fully described as Tract 5, Block 5077, 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 an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence regulation.

LOCATION: 4047 Cochran Chapel Road

APPLICANT: Karl A. Crawley

REQUEST:

The following request has been made on a site that is developed with a single family home/use:

- A request for a special exception to the fence height regulations of 4' is made to construct a 4'-5" high wrought iron fence with 5'-6" high stucco columns and one 6'-5" high wrought iron swinging vehicular gate flanked by 6'-4" high stucco and cast stone columns parallel and perpendicular to Cochran Chapel Road.

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 (FENCE HEIGHT):

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 one acre)
- North:** TH-2(A) (Townhouse district)
- South:** R-1ac(A) (Single family district one acre)
- East:** R-1ac(A) (Single family district one acre)
- West:** R-1ac(A) (Single family district one acre) and R-10(A) (Single family district 10,000 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 967-218, Property at 4055 Cochran Chapel Road (the subject site) | On April 21, 1997, the Board of Adjustment Panel C granted a request for a variance to the side yard setback of 10'. The case report stated that the request was made in conjunction with constructing and maintaining a new garage, a portion of which encroached into the entire 10' side yard setback. |
| 2. BDA 123-048, Property at 4040 Cochran Chapel Road (property southwest of the subject site) | On May 20, 2013, the Board of Adjustment Panel C approved a request for a variance to the front yard setback regulations of 15'. The case report stated that the request was made in conjunction with replacing an existing one-story home with a two-story home in virtually the same location, part of which would be located in the 40' front yard setback. |

GENERAL FACTS/STAFF ANALYSIS (FENCE HEIGHT):

- This request focuses on constructing a 4'-5" high wrought iron fence with 5'-6" high stucco columns and one 6'-5" high wrought iron swinging vehicular gate flanked by 6'-4" high stucco and cast iron columns, parallel and perpendicular to Cochran Chapel Road, in the 40' required front yard on a site developed with a single family home/use.
- The Dallas Development Code states that in all residential districts, except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- R-1ac(A) Single Family District requires the minimum front yard setback to be 40'.
- The following additional information was gleaned from the submitted revised site plan:
 - The proposal is represented as being approximately 176' in length parallel to Cochran Chapel Road, and extending approximately 31' in length perpendicular on the west side of the 40' required front yard.
 - The proposal is represented as being located approximately 8'-4" from the property line.
- While the Current Planner conducted a field visit of the site and surrounding area and noted no other visible fences above 4 feet high which appeared to be located in a front yard setback, a number of columns over 4 feet high were noted in several front yard setbacks.
- One home fronts the proposal.

- As of December 9th, 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 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted landscape plan would require the proposal exceeding 4' in height in the front yard setback 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.

November 12, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 12, 2014: The Current Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 26th deadline to submit additional evidence for staff to factor into their analysis; and the December 5th 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.

December 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. 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 City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

December 3, 2014: The applicant submitted additional information via e-mail to staff beyond what was submitted with the original application (see Attachment A).

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

BOARD OF ADJUSTMENT ACTION: DECEMBER 15, 2014

APPEARING IN FAVOR: Karl Crawley, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment, in request No. **BDA 134-101D**, on application of Karl Crawley, **grant** the request to construct and maintain an 8-foot-high fence in the property's front-yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Beikman**

AYES: 5 – Richardson, Carreon, Coulter, Schulte, Beikman

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-102D

BUILDING OFFICIAL'S REPORT: Application of Karl A. Crawley for a special exception to the fence height regulations at 4055 Cochran Chapel Road. This property is more fully described as Tract 6, Block 5077, 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 an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence regulation.

LOCATION: 4055 Cochran Chapel Road

APPLICANT: Karl A. Crawley

December 15, 2014 Public Hearing Notes:

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

REQUEST:

The following request has been made on a site that is developed with a single family home/use:

- A request for a special exception to the fence height regulations of 4' is made to construct a 3.5' high wrought iron fence atop a 1.5' high stucco base with 5.5' high stucco columns and one 8' high wrought iron swinging vehicular gate flanked by 6' high stucco columns parallel and perpendicular to Cochran Chapel Road.

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 (FENCE HEIGHT):

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 one acre)
- North: TH-2(A) (Townhouse district)
- South: R-1ac(A) (Single family district one acre)
- East: R-1ac(A) (Single family district one acre)
- West: R-1ac(A) (Single family district one acre) and R-10(A) (Single family district 10,000 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 967-218, Property at 4055 Cochran Chapel Road (the subject site) On April 21, 1997, the Board of Adjustment Panel C granted a request for a variance to the side yard setback of 10'. The case report stated that the request was made in conjunction with constructing and maintaining a new garage, a portion of which encroached into the entire 10' side yard setback.

2. BDA 123-048, Property at 4040 Cochran Chapel Road (property southwest of the subject site)

On May 20, 2013, the Board of Adjustment Panel C approved a request for a variance to the front yard setback regulations of 15'. The case report stated that the request was made in conjunction with replacing an existing one-story home with a two-story home in virtually the same location, part of which would be located in the 40' front yard setback.

GENERAL FACTS/STAFF ANALYSIS (FENCE HEIGHT):

- This request focuses on constructing a 3.5' high wrought iron fence atop a 1.5' high stucco base with 5.5' high stucco columns and one 8' high wrought iron swinging vehicular gate flanked by 6' high stucco columns, parallel and perpendicular to Cochran Chapel Road, in the 40' required front yard on a site developed with a single family home/use.
- The Dallas Development Code states that in all residential districts, except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- R-1ac(A) Single Family District requires the minimum front yard setback to be 40'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 175' in length parallel to Cochran Chapel Road, and extending approximately 30' in length perpendicular on the east and west sides of the 40' required front yard.
 - The proposal is represented as being located approximately 10' from the property line.
- While the Current Planner conducted a field visit of the site and surrounding area and noted no other visible fences above 4 feet high which appeared to be located in a front yard setback, a number of columns over 4 feet high were noted in several front yard setbacks.
- Two homes front the proposal.
- As of December 9th, 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 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted landscape plan would require the proposal exceeding 4' in height in the front yard setback 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.

November 12, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 12, 2014: The Current Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 26th deadline to submit additional evidence for staff to factor into their analysis; and the December 5th 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.

December 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. 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 City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

December 4, 2014: The applicant submitted additional information via e-mail to staff beyond what was submitted with the original application (see Attachment A).

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

BOARD OF ADJUSTMENT ACTION: DECEMBER 15, 2014

APPEARING IN FAVOR: Karl Crawley, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in request No. **BDA 134-102D**, on application of Karl Crawley, **grant** the request to construct and maintain an 8-foot-high fence in the property's front-yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with submitted revised site plan and revised fence and gate elevation is required.

SECONDED: Schulte

AYES: 5 – Richardson, Carreon, Coulter, Schulte, Beikman

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-119

BUILDING OFFICIAL’S REPORT: Application of Craig C. Wagstaff, represented by Chris B. Balling, for a special exception to the landscape regulations at 4243 Duncanville Road. This property is more fully described as Lot 1, Block A/8032, and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 4243 Duncanville Road

**APPLICANT: Craig C. Wagstaff
Represented by Chris B. Balling**

REQUEST:

A request for a special exception to the landscape regulations is made to maintain a motor vehicle fueling station use (Questar Fueling Station), and not fully meet the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
 - the topography of the site;
 - the extent to which landscaping exists for which no credit is given under this article;
- and

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City's Chief Arborist recommends approval of the applicant's request because the applicant has demonstrated strict compliance with the requirements of Article X would unreasonably burden the use of the property, and has favorably demonstrated the special exception would not negatively affect neighboring property. In this case, the only area in which the applicant is not proposing to meet the landscape regulations is the location of street trees. The Chief Arborist feels the exception in this case is reasonable because of the fact that both street frontages of the site are encumbered with fuel line easements where the planting of trees in the required code location could increase the possibility of root growth conflicts with the pipeline infrastructure.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: IR (Industrial Research)
West: IR (Industrial Research)

Land Use:

The site is currently developed with a motor vehicle fueling station. The areas to the north and west appear to be undeveloped; and the areas to the south and east are developed with commercial and vacant 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 and maintaining motor vehicle fueling station use (Questar Fueling Station), and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the submitted alternate landscape plan

does not provide the required street trees factored at one tree per 50 linear feet of frontage within 30 feet of the curb.

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by the new construction of a natural gas fueling station.
- The Chief Arborist's memo lists the following factors for consideration:
 1. Both street frontages are encumbered with two fuel line easements that are restrictive to tree planting. The extended fuel line easements are aerially monitored on a routine basis to help secure and maintain the lines. Planting of street trees in these locations restrict the ability to monitor the lines and could increase the possibility of root growth conflicts with the pipeline infrastructure.
 2. The required street trees are alternately placed within the large front yard in a central planting location which, along with a row of screening shrubs, will provided substantial buffering from the street. The proposed alternate landscape plan complies with all other Article X landscape requirements.
- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because the applicant has demonstrated strict compliance with the requirements of Article X would unreasonably burden the use of the property, and has favorably demonstrated the special exception would not negatively 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 alternate landscape plan as a condition to the request, the site would be provided exception from full compliance with the street tree requirements of Article X: The Landscape Regulations.

Timeline:

October 3, 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.

November 12, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 12, 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 November 26th deadline to submit additional evidence for staff to factor into their analysis; and the December 5th 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.

December 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. 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 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.

December 4, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: DECEMBER 15, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment grant application **BDA 134-119** 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 alternate landscape plan is required.

SECONDED: **Schulte**

AYES: 5 – Richardson, Carreon, Coulter, Schulte, Beikman

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-124

BUILDING OFFICIAL’S REPORT: Application of Ron Ragsdale, represented by Jeff Innmon, for a special exception to the landscape regulations at 1920 McKinney Avenue. This property is more fully described as Lot 3B, Block 524, and is zoned PD-193(HC) & (PDS 66), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 1920 McKinney Avenue

APPLICANT: Ron Ragsdale
Represented by Jeff Innmon

REQUEST:

A request for a special exception to the landscape regulations is made to construct and maintain a multi-story office use/structure on a site currently under development, and not fully provide required landscaping.

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist supports the applicant’s request because the applicant has reasonably demonstrated the proposed alternate landscape plan does not compromise the spirit and intent of the PD 193 landscape requirements for HC districts.
- In this case, the Chief Arborist notes among other things how:
 1. the applicant’s proposal to provide large canopy trees in wide planting strips compensates for the fact that the applicant is providing a lesser number than the required number of smaller than provided street trees;
 2. the fact that the majority of the aboveground parking structure within the nonresidential building is above the street-level retail units and is hidden behind

an enhanced façade that rises for several levels compensates for the applicant's request to not fully comply with the aboveground parking structure requirement of the ordinance.

BACKGROUND INFORMATION:

Site: PD 193 (HC) & PDS 66 (Planned Development, Heavy Commercial, Planned Development)
North: PD 193 (PDS 68) (Planned Development, Planned Development)
South: PD 193 (HC) & PDS 66 (Planned Development, Heavy Commercial, Planned Development)
East: PD 193 (PDS 68) (Planned Development, Planned Development)
West: PD 193 (PDS 66) (Planned Development, Planned Development)

Land Use:

The subject site is under development. The areas to the north, south, east, and west are developed with a mix of office, residential, and retail uses.

Zoning/BDA History:

- | | |
|--|--|
| 1. BDA 134-086, Property at 1907 McKinney Avenue (the lot southwest of the subject site) | On September 16, 2014, the Board of Adjustment Panel A granted a request for a special exception to the landscape regulations, and imposed the submitted alternate landscape plan as a condition to the request. The case report stated that this request was made to construct and maintain a surface parking lot on site developed with an office structure/use (HKS) - a structure that according to the application was developed prior to the landscape ordinance adopted in the mid 80's |
| 2. BDA 967-300, Property at 1907 McKinney Avenue (the lot southwest of the subject site) | On October 28, 1997, the Board of Adjustment Panel A was informed that the originally submitted request for a special exception to the landscape regulations was removed from the docket since it had been determined by staff that the request originally heard on September 23, 1997 was not required. |

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on constructing and maintaining a multi-story office use/structure on a site currently under development, and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the

proposed alternate landscape plan would reduce the required number of trees in the tree planting zone from 12 to 10 trees, and does not present a minimum 10 foot wide garage screening buffer on the sides of the building facing the streets.

- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new construction.
- The Chief Arborist's memo lists the following factors for consideration:
 - PD 193 (HC) does not have requirements for landscape site area, but only specifies street trees, sidewalks, and screening.
 - A portion of the property is zoned PDS 66 which requires a minimum 10 foot wide sidewalk and two pedestrian-scale lighting fixtures within that area along Harwood Street. These provisions are not subject to a special exception with this request and the site complies with those measures.
 - The standard requirement for street tree planting would provide 19 trees by calculation of 1 tree per 25' of frontage, however, to accommodate this requirement, the density of planting would place the trees from 12- 15 feet on center due to wide driveway entries to the garage, and due to the location of visibility triangles and utility vault conflicts. The applicant proposes to plant a total of 10 trees along Harwood Street and McKinney Avenue with a spacing of about 30 feet on center on Harwood Street (6 trees to mirror the species across the street for symmetry) and about 24 feet on center for the 4 remaining trees on McKinney Avenue.
 - The street trees proposed are 6 – 8" diameter large canopy trees. The planting area for the trees will be wide planting strips, as opposed to tree wells, which are better to accommodate the long-term growing conditions. Aerial growth conditions in the canopies and the soil volume for the root systems would be more favorable for the long-term health and growth of the fewer trees to be planted.
 - PD 193 states "aboveground parking structures must have a 10-foot landscaping buffer on any side facing a public right-of-way" and "the buffer must contain one tree for every 25 feet of frontage and evergreen shrubs planted three feet on-center."
 - In this particular design, the majority of the aboveground parking structure within the nonresidential building is above the street-level retail units and hidden behind an enhanced façade that rises for several levels. Additional garage levels are below grade and have no landscape requirement or site impact. All street-level garage frontage with Harwood and McKinney is exposed primarily at the garage entryways only, being where no buffer strip would be required.

- The building and paved exterior were designed for the purpose of safe and direct pedestrian access from the street to street-level retail uses and other pedestrian entryways. Placement of buffer landscaping could conflict with accessing the retail uses in this heavy commercial district. The sidewalk to the storefront doors and street-level façade is designed with an enhanced grid pattern which should provide a visual appeal.
- The City of Dallas Chief Arborist recommends approval of this request because the applicant has reasonably demonstrated the proposed alternate landscape plan does not compromise the spirit and intent of the PD 193 landscape requirements for HC districts.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the tree planting zone and garage screening buffer requirements) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards”.
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to tree planting zone (lesser number of trees) and garage screening buffer requirements of the Oak Lawn PD 193 landscape ordinance.

Timeline:

October 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.

November 12, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 12, 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 November 26th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th 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.

December 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. 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 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.

December 5, 2014: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: DECEMBER 15, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment grant application **BDA 134-124** 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 alternate landscape plan is required.

SECONDED: Schulte

AYES: 5 – Richardson, Carreon, Coulter, Schulte, Beikman

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-126

BUILDING OFFICIAL'S REPORT: Application of Lorri Davis, represented by John Dwyre, to appeal the decision of the administrative official at 8500 N. Stemmons Freeway, Suite 4040. This property is more fully described as Lot 3, Block 7941, and is zoned MU-3, which requires that the building official shall deny a certificate of occupancy if the building official determines that the certificate of occupancy being applied for is in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the denial of a certificate of occupancy.

LOCATION: 8500 N. Stemmons Freeway, Suite 4040

APPLICANT: Lorri Davis
Represented by John Dwyre

December 15, 2014 Public Hearing Notes:

The Assistant City Attorney assisting the Building Official on this application submitted additional documentation to the Board at the public hearing.

REQUEST:

The submitted application states that the applicant is appealing the denial of a certificate of occupancy on a site developed with a multi-story office structure that includes Suite 4040, the specific suite that is the focus of this request.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

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

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

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: MU-3 (Mixed Use)
South: MU-3 (Mixed Use)
East: IR (Industrial Research)
West: MU-3 (Mixed Use)

Land Use:

The subject site is developed with a multi-story office structure that includes Suite 4040, the specific suite that is the focus of this request. The areas to the north and south appear to be developed with retail uses; the area to the east is developed with a private country club use (Brook Hollow Golf Club), and to the west is Stemmons Freeway.

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:

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

Timeline:

September 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.

November 12, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 12, 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 November 26th deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of application); and the December 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

December 1, 2014: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded additional information that the applicant had submitted to him to the Board Administrator (see Attachment A).

December 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. 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 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.

December 5, 2014: The Assistant City Attorney assisting the Building Official on this application submitted additional documentation to the Board Administrator beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: DECEMBER 15, 2014

APPEARING IN FAVOR: John Dwyre, 4207 Gardendale, Ste 104B, San Antonio, TX 78229

APPEARING IN OPPOSITION: Amanda Chase, Asst. City Atty., 1500 Marilla, Dallas, TX
Daunte Rushton, 320 E. Jefferson, #118, Dallas, TX

Break: 2:10 P.M.
Resumed: 2:16 P.M.

MOTION #1: Schulte

I move to suspend the rules and accept the evidence that is being presented today.

SECONDED: Beikman
AYES: 5 – Richardson, Carreon, Coulter, Schulte, Beikman
NAYS: 0
MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Schulte

Having fully reviewed the decision of the City of Dallas Building Official in **Appeal No. BDA 134-126**, on application of Lorri Davis, represented by John Dwyre, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **affirm** the decision of the building official and **deny** the relief requested by the applicant **without prejudice**.

SECONDED: Carreon
AYES: 5 – Richardson, Carreon, Coulter, Schulte, Beikman
NAYS: 0 –
MOTION PASSED: 5 – 0 (unanimously)

MOTION: Schulte

I move to adjourn this meeting.

SECONDED: Carreon

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman
NAYS: 0 –
MOTION PASSED: 5 – 0 (unanimously)

4:21P. M. - Board Meeting adjourned for **December 15, 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.