

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL COUNCIL CHAMBERS  
WEDNESDAY, February 20, 2019**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Chair, Marla Beikman, regular member, Terrance Perkins, regular member, Joanna Hampton, regular member and Philip Sahuc, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Chair, Marla Beikman, regular member, Terrance Perkins, regular member, Joanna Hampton, regular member and Philip Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, Elaine Hill, Board Secretary, David Nevarez, Engineering and Phil Erwin Chief Arborist

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, Elaine Hill, Board Secretary, David Nevarez, Engineering and Phil Erwin, Chief Arborist

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**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 20, 2019 docket.**

**BOARD OF ADJUSTMENT ACTION February 20, 2019**

**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B January 16, 2019 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: February 20, 2019**

**MOTION:** None

The minutes were approved.

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA178-127(OA)

**REQUEST:** To waive the two-year limitation on a final decision reached by Board of Adjustment Panel B on November 14, 2018 - a request for a special exception to the fence standards regulations related to fence height of 2 feet.

**LOCATION:** 10747 Lennox Lane

**APPLICANT:** Kelly Saxton  
Represented by Jason Osterberger of Jason Osterberger Designs

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

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

**GENERAL FACTS/TIMELINE:**

November 14, 2018: The Board of Adjustment Panel B granted a request for a special exception to the fence standards regulations of 2' imposing the submitted site plan and elevation as a condition to this request. The case report stated that the request was made to made to construct and maintain 6' high cast stone fences higher than 4' in height in the site's Lennox Lane and Catina Lane front yards setbacks on a site being developed with a single family home. (See Attachment A for information related to this application).

January 29, 2019: The applicant's representative submitted a letter to the Board Administrator requesting that the Board waive the two-year limitation on the request for a special exception to the fence standards regulations of 2' granted by Board of Adjustment Panel B in November of 2018 (see Attachment B).

This miscellaneous item request to waive the two-year limitation was made in order for the applicant to file a new application for a front yard variance on the property.

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

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

January 29, 2019: The Board Administrator emailed the applicant's representative information regarding his miscellaneous item request (see Attachment C).

**BOARD OF ADJUSTMENT ACTION FEBRUARY 20, 2019**

**APPEARING IN FAVOR:** Jason Osterberger, P.O. Box 2381, Coppell, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Hounsel**

I move that the Board of Adjustment deny the request to waive the two-year limitation on a final decision reached by Board of Adjustment Panel B on November 14, 2018 – a request for a special exception to the fence standards regulations.

**SECONDED: Sahuc**

**AYES: 4 – Hounsel, Perkins, Beikman, Hampton, Sahuc**

**NAYS: 0**

**MOTION PASSED 5 – 0 (unanimously)**

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**FILE NUMBER:** BDA189-017(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Humberto Hernandez, represented by Josefina Plata, for special exceptions to the fence standards and visual obstruction regulations at 10015 Old Seagoville Road. This property is more fully described as Lot 52A, block 7885, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet, prohibits the use of certain materials for a fence and requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain a 9 foot high fence in a required front yard, which will require a 5 foot special exception to the fence standards regulations, to construct and/or maintain a fence of a prohibited material, which will require a special exception to the fence standards regulations, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION:** 10015 Old Seagoville Road.

**APPLICANT:** Humberto Hernandez  
Represented by Josefina Plata

**REQUESTS:**

The following requests for special exceptions to the fence standards regulations have been made on a site that is developed with a single-family home:

1. a special exception to the fence standards regulations related to fence height of 5’ is made to maintain a fence higher than 4’ in height in the site’s 25’ Old Seagoville Road front yard setback– a 5’ 6” high combination wrought iron picket/metal panel fence with 5’ 6” high stone columns and a 9’ high metal entry gate with 4’ 8” to 8’ high stone columns;
2. a special exception to the fence standards regulations related to fence height of 5’ is made to maintain a fence higher than 4’ in height in the site’s September Lane 25’ front yard setback (September Lane) – a 5’ 6” high combination wrought iron picket/metal panel fence with 5’ 6” high stone columns and a 9’ high metal entry gate with 4’ 8” to 8’ high stone columns;
3. A request for a special exception to the fence standards regulations related to prohibited fence materials is made to maintain a fence of a prohibited fence material (metal panels) – in this case, the aforementioned metal fence panels along both Seagoville Road and September Lane;
4. Special exceptions to the visual obstruction regulations are made to maintain portions of a 5’ 6” high combination wrought iron picket/metal panel fence with 4’ 8” to 8’ high stone columns and portions of a 9’ high metal swing gate in the two 20’ visibility triangles on both sides of the driveway into the site from Old Seagoville Road; and
5. Special exceptions to the visual obstruction regulations are made to maintain portions of a 5’ 6” high combination wrought iron picket/metal panel fence with 4’ 8” to 8’ high stone columns and portions of a 9’ high metal swing gate in the two 20’ visibility triangles on both sides of the driveway into the site from September Lane.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS:**

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

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

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

**STAFF RECOMMENDATION (fence standards regulations):**

No staff recommendations are made on these or any requests for a special exception to the fence standards since the basis for this type of appeals are when in the opinion of the board, the special exceptions will not adversely affect neighboring property.

**STAFF RECOMMENDATION (visual obstruction special exceptions):**

Approval, subject to the following condition:

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

Rationale:

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

**Zoning:**

Site: R-7.5(A) (Single family residential 7,500 square feet)  
North: R-7.5(A) (Single family residential 7,500 square feet)  
South: PD 956 (Single family residential 7,500 square feet)  
East: R-7.5(A) (Single family residential 7,500 square feet)  
West: R-7.5(A) (Single family residential 7,500 square feet)

**Land Use:**

The subject site is developed with a single-family home structure. The areas to the north, east, and south are developed with single-family uses; and the area to the south is developed with a public park use.

**Zoning/BDA History:**

There have 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 (fence standards regulations):**

- The requests for special exceptions to the fence standards regulations on a site developed with a single-family home focus on:
  - 1) maintaining a 5' 6" high combination wrought iron picket/metal panel fence with 5' 6" high stone columns and a 9' high metal entry gate with 4' 8" to 8' high stone columns located in the site's Old Seagoville Road front yard setback;
  - 2) maintaining a 5' 6" high combination wrought iron picket/metal panel fence with 5' 6" high stone columns and a 9' high metal entry gate with 4' 8" to 8' high stone columns located in one of the site's September Lane front yard setback; and
  - 3) maintaining the existing fences made of a prohibited fence material (sheet metal).
- The property is located in an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.
- Given the single-family zoning and location of the corner lot subject site, it has two required front yard setbacks. The site has a 25' front yard setback along Old Seagoville Road, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district, and a 25' required front yard setback along September Lane, the longer of the two frontages which is typically regarded as a side yard on this R-7.5(A) zoned property (a 9' high fence could be erected by right). However, the site has a required front yard setback along September Lane in order to maintain the continuity of the established front yard setback established by the lots developed with single family homes north of the site that front/are oriented westward towards September Lane.
- Section 51A-4.602(a) (2) of 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.
- Section 51A-4.602(a)(9) of the Dallas Development Code states that except as provided in this subsection, the following fence materials are prohibited:
  - Sheet metal;
  - Corrugated metal;
  - Fiberglass panels;
  - Plywood;
  - Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
  - Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and
  - Barbed wire razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.
- The applicant submitted a site plan/elevation of the proposal in the front yard setbacks with notations indicating that the proposal reaches a maximum height of 9'.
- The following additional information was gleaned from the submitted site plan/elevation:

- Along Old Seagoville Road: the proposal is represented as being approximately 120' in length parallel to the street, approximately 25' perpendicular to the street on the east side of the site and between 0' -35' on the west side in this required front yard as the fence approaches the intersection with September Lane.
- Along September Lane: the proposal is represented as being approximately 200' in length, parallel to the street approximately 25' perpendicular to the street on the north side of the site, and between 0' - 35' on the south side in this required front yard as the fence approaches the intersection with Old Seagoville Road.
- The submitted site plan represents a site that is approximately 23,700 square feet in area where approximately 300 linear feet of prohibited fence material (sheet metal fence) is located on this property.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area along Old Seagoville Road and September Lane, approximately 500' north, south, west, and east of the subject site, and noted a number of other fences to the north and west of the subject site that appeared to be above 4' in height and in a front yard setback. None of these existing fences have recorded BDA history. In addition, Staff did not observe any other sheet metal fences within the area.
- As of February 8, 2019, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height of 9' and prohibited materials on Old Seagoville Road and September Lane will not adversely affect neighboring property.
- Granting these special exceptions to the fence standards regulations related to height of up to 5' and related to prohibited materials in certain areas on the site with a condition imposed that the applicant complies with the submitted site plan/elevation document, would require the proposal exceeding 4' in height in the front yard setbacks and of prohibited materials as shown on this document.

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

- These requests for special exceptions to the visual obstruction regulations focus on maintaining portions of a 5' 6" high combination wrought iron picket/metal panel fence with 4' 8" to 8' high stone columns and portions of a 9' high metal entry gate with in the two 20 foot visibility triangles on both sides of the driveway into the site from Old Seagoville Road; and maintaining portions of a 5' 6" high combination wrought iron picket/metal panel fence with 4' 8" to 8' high stone columns and portions of a 9' high metal entry gate with in the two 20 foot visibility triangles on both sides of the driveway into the site from September Lane.
- Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20-foot visibility triangles at drive approaches and at alleys on properties zoned single family); and

- between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The property is located in a R-7.5(A) zoning district which requires, the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.
- A site plan/elevation have been submitted indicating portions of an existing 5' 6" high combination wrought iron picket/metal panel fence with 4' 8" to 8' high stone columns and portions of a 9' high metal entry gate located in the two 20 foot visibility triangles on both sides of the driveway into the site from Old Seagoville Road; and portions of an existing 5' 6" high combination wrought iron picket/metal panel fence with 4' 8" to 8' high stone columns and portions of a 9' high metal entry gate within the two 20 foot visibility triangles on both sides of the driveway into the site from September Lane.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulation to maintain portions of a 5' 6" high combination wrought iron picket/metal panel fence with 4' 8" to 8' high stone columns and portions of a 9' high metal entry gate in the two 20 foot visibility triangles on both sides of the driveway into the site from Old Seagoville Road; and to maintain portions of a 5' 6" high combination wrought iron picket/metal panel fence with 4' 8" to 8' high stone columns and portions of a 9' high metal entry gate in the two 20 foot visibility triangles on both sides of the driveway into the site from September Lane, do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan/elevation would limit the items located in the 20' drive approach visibility triangles into the site from Old Seagoville Road, and the 20' drive approach visibility triangles into the site from September Lane to that what is shown on this document.

**Timeline:**

November 20, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 9, 2019: The Board Administrator emailed the applicant's representative the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the January 30<sup>th</sup> deadline to

submit additional evidence for staff to factor into their analysis; and the February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

February 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: The Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

February 6, 2019: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

**BOARD OF ADJUSTMENT ACTION: February 20, 2019**

APPEARING IN FAVOR: Humberto Hernandez, 10015 Old Seagoville Rd., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION 1 of 3: Beikman**

I move that the Board of Adjustment, in Appeal No. BDA 189-017, on application of Humberto Hernandez, represented by Josefina Plata, **grant** the request of this applicant to maintain a nine-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

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

**SECONDED: Sahuc**

**AYES:** 4 - Hounsel, Beikman, Sahuc, Hampton

**NAYS:** 1 - Perkins

**MOTION PASSED:** 4 – 1

**BOARD OF ADJUSTMENT ACTION: February 20, 2019**

APPEARING IN FAVOR: Humberto Hernandez, 10015 Old Seagoville Rd.,  
Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION 2 of 3: **Beikman**

I move that the Board of Adjustment, in Appeal No. BDA 189-017, on application of Humberto Hernandez, represented by Josefina Plata, **grant** the request of this applicant to maintain a fence of a prohibited material, metal panels, as a special exception to the materials requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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

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

SECONDED: **Hounsel**

AYES: 4 - Hounsel, Beikman, Sahuc, Hampton

NAYS: 1 - Perkins

MOTION PASSED: 4 – 1

MOTION 3 of 3: **Beikman**

I move that the Board of Adjustment, in Appeal No. BDA 189-017, on application of Humberto Hernandez, represented by Josefina Plata, **deny** the special exception requested by this applicant to maintain items in the visibility triangle at the driveway approach **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: **Hampton**

AYES: 3 - Beikman, Sahuc, Hampton

NAYS: 2 - Hounsel, Perkins

MOTION PASSED: 3 – 2

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FILE NUMBER: BDA189-020(OA)

**BUILDING OFFICIAL'S REPORT:** Application of Eric Rodriguez for variances to the lot coverage, rear yard setback, and side yard setback regulations at 4136 Cole Avenue. This property is more fully described as Lot 9, Block 1519, and is zoned PD-193 MF (2), which requires a 60% maximum lot coverage, a rear yard setback of 10 feet, and a side yard setback of 10 feet. The applicant proposes to construct and/or maintain structures with 1,942 square feet of floor area, which will require a 2,291 square foot variance to the maximum lot coverage regulations, to construct and/or maintain structures and provide a 1 foot rear yard setback, which will require a 9 foot

variance to the rear yard setback regulations, and to construct and/or maintain structures and provide a 1 foot side yard setback, which will require a 9 foot variance to the side yard setback regulations..

**LOCATION:** 4136 Cole Avenue

**APPLICANT:** Eric Rodriguez

**REQUESTS:**

The following requests have been made on a site that is developed with a six-unit multifamily structure:

1. A request for a variance to the rear yard setback regulations of up to 9' is made to maintain two carport structures as close as 1' from the rear property line or up to 9' into the required 10' rear yard setback;
2. Requests for variances to the side yard setback regulations of 9' are made to maintain:
  - a) an existing carport, and patio cover structures 1' from the north side property line or 9' into this north 10' side yard setback; and
  - b) an existing carport and canopy structures 1' from the south side property line or 9' into this required 10' side yard setback.
3. A request for a variance to the lot coverage regulations of 2,291 square feet or approximately 24 percent is made to maintain the two carport structures, patio cover and canopy additions to an existing multi-family structure which would exceed the maximum 60 percent lot coverage on the subject site.

**STANDARD FOR A VARIANCE:**

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

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

**STAFF RECOMMENDATION (rear yard, side yard, and lot coverage variances):**

Denial

Rationale:

- Staff concluded that the applicant had not substantiated how the variances are necessary to permit development of this rectangular-shaped, flat, and approximately 9,400 square foot subject site in order for it to be developed in a manner commensurate with the development upon other parcels of land with the same PD 193 (MF-2) zoning district.
- The applicant had not established how features of the site restricts it from being developed with a use/structure that can comply with setback and lot coverage regulations. The site is currently developed with a multifamily structure that appears to have originally complied with setback and lot coverage requirements. The variances in this application appear to be made only to remedy illegal additions to the original structure.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (MF-2) (Planned Development District)  
North: PD 193 (GR) (Planned Development District)  
South: PD 193 (MF-2) (Planned Development District)  
East: PD 193 (PDS 17) (Planned Development District)  
West: PD 193 (MF-2) (Planned Development District)

**Land Use:**

The subject site is developed with a six-unit multifamily structure. The area to the north is developed with retail uses; the areas to the south, east, and west are developed with multifamily uses.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS (rear yard variance):**

- This request focuses on maintaining two carport structures as close as 1' from the rear property line or 9' into the required 10' rear yard setback.
- Structures on lots zoned PD 193 (MF-2) are required to provide a minimum rear yard setback of 10'.
- A site plan has been submitted denoting a carport structure on the rear north side of the lot located 1' from the site's rear property line or 9' into the 10' rear yard setback and a second carport on the rear south side of the lot located 8' from the from the site's rear property line or 2' into the 10' rear yard setback.
- DCAD records indicate the following improvements for property located at 4136 Cole Avenue: "main improvement: a structure with 6,000 square feet of living area built in 1960" and no "additional improvements."

- The subject site is rectangular in shape, flat, and according to the application, is 0.215 acres (or approximately 9,400 square feet) in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the rear 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 PD193 (MF-2) 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 PD193 (MF-2) zoning classification.
- If the Board were to grant this rear yard setback variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document which is a carport structure on the rear north side of the lot located 1' from the site's rear property line or 9' into the 10' rear yard setback, and a second carport on the rear south side of the lot located 8' from the from the site's rear property line or 2' into the 10' rear yard setback.

**GENERAL FACTS/STAFF ANALYSIS (side yard variance):**

- The requests focus on maintaining:
  - 4) an existing carport, and patio cover structures 1' from the north side property line or 9' into this north 10' side yard setback; and
  - 5) an existing carport and canopy structures 1' from the south side property line or 9' into this required 10' side yard setback.
- Structures on lots zoned PD193 (MF-2) are required to provide a minimum side yard setback of 10'.
- A site plan has been submitted denoting an existing carport, and patio cover structures 1' from the north side property line and an existing carport and canopy structures 1' from the south side property line.
- It appears from the submitted site plan that approximately 100 percent of the existing canopy and patio cover, approximately 1,000 square foot structures footprint, are located in these 10' side yard setbacks and approximately 80 percent of the existing carports, approximately 900 square foot structures footprint, are located in these 10' side yard setbacks.
- DCAD records indicate the following improvements for property located at 4136 Cole Avenue: "main improvement: a structure with 6,000 square feet of living area built in 1960" and no "additional improvements.
- The subject site is rectangular in shape, flat, and according to the application, is 0.215 acres (or approximately 9,400 square feet) in area.
- 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 PD193 (MF-2) 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 PD193 (MF-2) zoning classification.
- If the Board were to grant this side yard setback variance request and impose the submitted site plan as a condition, the structures in the side yard setbacks would be limited to what is shown on this document which are a carport, and a patio cover structures 1' from the north side property line or 9' into this north 10' side yard setback and a carport, and a canopy structures 1' from the south side property line or 9' into this south 10' side yard setback.

**GENERAL FACTS/STAFF ANALYSIS (lot coverage variance):**

- The request focuses on maintaining two carport structures, patio cover, and canopy additions to an existing multi-family structure and exceeding the maximum 60 percent lot coverage by 2,291 square feet or approximately 24 percent on the subject site.
- PD 193 provides the following:
  - Lot coverage. Maximum lot coverage is 60 percent for residential structures.
- DCAD records indicate the following improvements for property located at 4136 Cole Avenue: “main improvement: a structure with 6,000 square feet of living area built in 1960” and no “additional improvements.
- The subject site is rectangular in shape, flat, and according to the application, is 0.215 acres (or approximately 9,400 square feet) in area
- The application states that a variance is made to maintain the existing structures on the lot which will exceed the 60 percent maximum lot coverage in PD 193 district by 2, 291 square feet of 84 percent.
- The submitted site plan makes the following notations:
  - Existing 6-unit two story brick and frame multifamily slab: 5,985 square feet
  - Covered Patio: 900 square feet
  - Carports: 906 square feet
  - Canopy: 136
  - Total area coverage: 7,927 square feet
  - Area of lot: 9,394 square feet
  - Lot coverage: 84 percent
  - Maximum lot coverage: 60 percent
  - Surplus lot coverage: 24 percent
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the lot coverage 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 PD193 (MF-2) 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 PD193 (MF-2) zoning classification.
- If the Board were to grant the lot coverage variance request and impose the submitted site plan as a condition, the building footprints of the structures on the site would be limited to what is shown on this document.

**Timeline:**

- November 29, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 9, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the January 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.
- February 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: The Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: February 20, 2019**

APPEARING IN FAVOR: Eric Rodriguez, 1300 Polk Street, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION 1 of 3: Perkins**

I move that the Board of Adjustment, in Appeal No. BDA 189-020, on application of Eric Rodriguez, **deny** the variance to the maximum lot coverage regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

**SECONDED: Beikman**

AYES: 5 - Hounsel, Beikman, Sahuc, Hampton, Perkins

NAYS: 0

MOTION PASSED: 5 – 0 (Unanimously)

**MOTION 2 of 3: Perkins**

I move that the Board of Adjustment, in Appeal No. BDA 189-020, on application of Eric Rodriguez, **deny** the variance to the side yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

**SECONDED: Beikman**

AYES: 5 - Hounsel, Beikman, Sahuc, Hampton, Perkins

NAYS: 0

MOTION PASSED: 5 – 0 (Unanimously)

**MOTION 3 of 3: Perkins**

I move that the Board of Adjustment, in Appeal No. BDA 189-020, on application of Eric Rodriguez, **deny** the variance to the rear yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

**SECONDED: Beikman**

AYES: 5 - Hounsel, Beikman, Sahuc, Hampton, Perkins

NAYS: 0  
MOTION PASSED: 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA189-021(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Robert Baldwin, represented by Rob Baldwin and Associates, for special exceptions to the off-street parking and landscape regulations at 5842 Live Oak Street. This property is more fully described as Lot 14 and 15, Block 1/2144, and is zoned CR, which requires off-street parking and mandatory landscaping to be provided. The applicant proposes to construct and/or maintain a structure for an office and general merchandise or food store 3500 square feet or less uses, and provide 18 of the required 22 off-street parking spaces, which will require a 4 space special exception to the off-street parking regulations, and to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 5842 Live Oak Street

**APPLICANT:** Robert Baldwin  
Represented by Rob Baldwin and Associates

**February 20<sup>th</sup> public hearing notes:**

- The Sustainable Development and Construction Department Board of Adjustment Senior Planner circulated additional documentation from the applicant to the Board at the briefing – a document where the applicant was requesting that his applications be denied without prejudice.

**REQUESTS:**

The following requests have been made on a site that is developed with a vacant car wash structure/use:

1. A request for a special exception to the off-street parking regulations of 4 spaces is made to demolish the existing site’s structure and to construct and maintain an approximately 6,000 square foot structure with “office” and “general merchandise or food store 3,500 square feet or less” uses, and provide 18 of the required 22 off-street parking spaces; and
2. A request for a special exception to the landscape regulations to demolish the existing site’s structure and to the new structure, and to not fully meet the landscape regulations, more specifically, what appears to be the required street buffer zone, possibly the perimeter landscape residential buffer zone, and landscape design option requirements.

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

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:

- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
- (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

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

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 (special exception to the off-street parking regulations):**

Approval, subject to the following condition:

- The special exception of 4 spaces shall automatically and immediately terminate if and when the “office” and “general merchandise or food store 3,500 square feet or less” uses are changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer indicated that he has no objections to the applicant’s request.
- The applicant has substantiated how the proposed “office” and “general merchandise or food store 3,500 square feet or less” uses do not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**STAFF RECOMMENDATION (special exception to the landscape regulations):**

Pending

Rationale:

- The City of Dallas Chief Arborist cannot provide a final recommendation given the time in which the revised alternate landscape plan was submitted. While the Chief Arborist has commented how he felt the original alternate plan was acceptable for support due to minor deficiencies based on spatial limitations, he was unable to address how these changed site factors may have been altered with the new parking configuration on a revised landscape plan. The Chief Arborist has indicated that he intends to provide final conclusions regarding the revised landscape plan at the February 20<sup>th</sup> public hearing.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community retail)  
North: LO-2 (Limited office)  
South: CR (Community retail)  
East: PD 63 (Planned Development)  
West: CR (Community retail)

**Land Use:**

The site is currently developed with a vacant car wash structure/use. The areas to the north, south, and west are developed with office and retail uses, and the area to the east is developed with single family uses.

**Zoning/BDA History:**

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. BDA156-084, Property at 5842 Live Oak Street (the subject site)</li> </ol> | <p>On August 26, 2015, Board of Adjustment Panel B approved a request for a special exception to the landscape regulations to construct and maintain an approximately 3,500 square foot structure (medical office use) on a site developed with a vacant car wash structure/use, and not fully meet the landscape regulations.</p> |
|--|--|

**GENERAL FACTS/STAFF ANALYSIS (special exception to the off-street parking regulations):**

- This request for a special exception to the off-street parking regulations of 4 spaces focuses on constructing and maintaining 6,000 square foot structure with “office” and “general merchandise or food store 3,500 square feet or less” uses on a site developed with a vacant car wash structure/use and providing 18 (or 78 percent) of the 22 off-street parking spaces required by code.
- Chapter 51A-4.207 (5) (C) requires the following off-street parking requirement:
  - Office: one space per 100 square feet of floor area; with a minimum of four spaces.

- Chapter 51A-4.210 (13) (C) requires the following off-street parking requirement:
  - General merchandise or food store: one space per 200 square feet of floor area.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed “office” and “general merchandise or food store 3,500 square feet or less” uses do not warrant the number of off-street parking spaces required, and
  - The special exception of 4 spaces (or a 22 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 4 spaces shall automatically and immediately terminate if and when the “office” and “general merchandise or food store 3,500 square feet or less” uses are changed or discontinued, the applicant could construct and maintain structure on the site, and provide 18 (or 78 percent) of the 22 required off-street parking spaces.

**GENERAL FACTS/ STAFF ANALYSIS (special exception to the landscape regulations):**

- This request for a special exception to the landscape regulations focuses on replacing the existing structure on the site with a new “office” and “general merchandise or food store 3,500 square feet or less” structure, not fully meeting the landscape regulations, more specifically, what appears to be the required street buffer zone, possibly the perimeter landscape residential buffer zone, and landscape design option requirements.
- 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 Chief Arborist’s memo states the following with regard to “request”:
  - The applicant is requesting a special exception to the landscaping regulations of the 2018 Article X ordinance in the Dallas Development Code. The revised alternative landscape plan is for a property with new development requiring landscape improvements.
- The Chief Arborist’s memo states the following with regard to “provision”:
  - A revised landscape plan and revised site plan were being prepared at the time of this memo to address recommended changes for the parking lot configuration. I have not been able to review the final documents to provide final comment on any deficiencies to Article X. In reviewing the original alternate landscape plan, the majority of landscaping requirements had been met and some changes to parking may have helped to bring the landscaping into compliance.
- The Chief Arborist’s memo states the following with regard to “deficiencies”:
  - The alternative landscape plan submitted with the application was deficient in compliance with the street buffer zone for one parking space location. It was

undetermined if the residential buffer zone (for the residential adjacency) would be compliant with the 10 feet average requirement or not. Listed design options were not correctly assessed (no urban streetscape condition applied), but some possible point options were not listed. Only 10 points were required and not 15 as stated on the landscape plan.

- The Chief Arborist’s memo states the following with regard to “recommendation”:
  - The chief arborist cannot provide a final recommendation for the revised alternate landscape plan since it had not been presented by time for submittal of the memo to the Board administrator. The original alternate plan was acceptable for support due to minor deficiencies based on spatial limitations, but I cannot address how these changed site factors may have been altered with the new parking configuration. I can provide final conclusions with the hearing.
- 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 approval would provide exception to what appears to be the required street buffer zone, possibly the perimeter landscape residential buffer zone, and landscape design option requirements.

#### **TIMELINE:**

December 4, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 8, 2019: 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”.

January 9, 2019: The Board Senior Planner emailed the applicant’s representative the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the January 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: The Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

February 6, 2019: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections".

February 8, 2018: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: February 20, 2019**

**APPEARING IN FAVOR:** Rob Baldwin, 3904 Elm Street, #B Dallas, TX  
Larry Offett, 6038 Bryan Pkwy., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION 1 of 2: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 189-021, on application of Rob Baldwin, represented by Baldwin and Associates, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that denying the application would not unreasonably burden the use of the property or the special exception will adversely affect neighboring property.

**SECONDED: Beikman**

**AYES:** 5 - Hounsel, Beikman, Sahuc, Hampton, Perkins

**NAYS:** 0

**MOTION PASSED:** 5 – 0 (Unanimously)

**MOTION 2 of 2: Hounsel**

I move that the Board of Adjustment, in Appeal No. BDA 189-021, on application of Rob Baldwin, represented by Baldwin and Associates, **deny** the off-street parking regulations special exception requested by this applicant **without** prejudice because our evaluation of the property use and the testimony shows that granting the application would increase traffic hazards or increase traffic congestion on adjacent or nearby streets **and** the parking demand generated by the use does warrant the number of required parking spaces.

**SECONDED: Beikman**

AYES: 5 - Hounsel, Beikman, Sahuc, Hampton, Perkins  
NAYS: 0  
MOTION PASSED: 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA189-023(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Samina Jamal for a special exception to the landscape regulations, and for a variance to the off-street parking regulations at 12920 Preston Road. This property is more fully described as Lot 1, Block A/7442, and is zoned RR, which requires mandatory landscaping and requires off-street parking to be provided. 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, and to construct and/or maintain a structure for a general merchandise or food store 3500 square feet or less and motor vehicle fueling station uses, and provide 8 of the required 11 off-street parking spaces, which will require a 3 space variance to the off-street parking regulations.

**LOCATION:** 12920 Preston Road

**APPLICANT:** Samina Jamal

**REQUESTS:**

The following requests have been made on a site that is developed with a general merchandise or food store/motor vehicle fueling station structure/use:

1. A request for a variance to the off-street parking regulations of 3 spaces is made to replace the existing one-story (according to DCAD) approximately 1,000 square foot “general merchandise building” constructed in 1984 with a new 1-story, approximately 1,750 square foot building for a general merchandise or food store 3,500 square feet or less and a motor vehicle fueling station uses, and provide 8 (or 73 percent) of the 11 required off-street parking spaces on the subject site.
2. A request for a special exception to the landscape regulations is made in conjunction the replacing the existing structure on the site with a larger structure, and not fully meeting the landscape regulations, more specifically, the street buffer zone, street tree, and design option requirements.

**STANDARD FOR A VARIANCE (Variance to the off-street parking regulations):**

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

- (A) not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done;

- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

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

The board may grant a special exception to the landscape and tree preservation 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;
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION (Variance to the off-street parking regulations):**

Denial

Rationale:

- While staff recognized that the site was slightly irregular in shape, staff concluded from the information submitted by the applicant at the time of the February 5<sup>th</sup> staff review team meeting, that the applicant had not substantiated how the variance to the off-street parking regulations of 3 spaces is necessary to permit development of this flat, approximately 12,800 square foot site in order for it to be developed in a manner commensurate with the development upon other parcels of land with the same RR zoning. The site is currently developed with a structure/use that complies with code, and that it appears that the hardship in this case is self-created in that the parking variance is only made to replace an existing structure/use that complies with off-street parking regulations with a larger one that cannot.
- In addition, staff concluded from the information submitted by the applicant at the time of the February 5<sup>th</sup> staff review team meeting that granting the variance appeared to be contrary to public interest since the Sustainable Development Department Senior Engineer submitted a review comment sheet marked “Recommends denial” with the following comments: “Average of parking supply data (provided by applicant) exceeds request. National average parking demand for

convenience stores exceeds request. The proposed parking layout conflicts with access to underground fuel storage.”

**STAFF RECOMMENDATION (special exception to the landscape regulations):**

Approval, subject to the following condition:

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

Rationale for approval:

- The City of Dallas Chief Arborist supports the request and recommends approval on the basis that strict compliance with the full requirements of 51A-10.100 and 51A-10.120 will unreasonably burden the continued use of the commercial property under renovation and with the continued established use, and that the exception would not adversely affect neighboring properties.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: RR (Regional retail)  
North: RR (Regional retail)  
South: RR (Regional retail)  
East: RR (Regional retail)  
West: RR (Regional retail)

**Land Use:**

The site is currently developed with a general merchandise or food store/motor vehicle fueling station structure/use. The areas to the north, south, east, and west are developed with a mix of office, and retail uses.

**Zoning/BDA History:**

1. BDA93-183, Property at 12829 Preston Road (the property located two lots southwest from the subject site)

On December 14, 1993, the Board of Adjustment approved a request for a special exception to the off-street parking regulations to allow the applicant to lease approximately 4,300 square foot structure (restaurant use) on a site developed with a shopping center and grant a 10 percent or 43 space reduction on this site.

2. BDA93-189, Property at 12829 Preston Road (The property three lots southwest from the subject site)

On December 14, 1993, the Board of Adjustment approved a request for a special exception to the off-street parking regulations to allow the applicant to lease approximately 4,800 square foot structure (restaurant use) on a site developed with a shopping center and grant a 10 percent or 40 space reduction on this site.

**GENERAL FACTS/STAFF ANALYSIS (Variance to the off-street parking regulations):**

- This request for a variance to the off-street parking regulations of 3 spaces (or a 27 percent reduction of the off-street parking spaces required) focuses on replacing an existing one-story (according to DCAD) approximately 1,000 square foot “general merchandise building” constructed in 1984 with a new 1-story, approximately 1,750 square foot building for a general merchandise or food store 3,500 square feet or less and a motor vehicle fueling station, and providing 8 (or 73 percent) of the 11 required off-street parking spaces on the subject site.
- The Dallas Development Code requires the following off-street parking requirements:
  - General merchandise or food store 3,500 square feet or less use: 1 space per 200 square feet.
  - Motor vehicle fueling station use: 2 spaces.
- A site plan has been submitted with this application that denotes a 1,750 square foot building for a “general merchandise or food store 3,500 square feet or less” and a “motor vehicle fueling station” uses. This plan denotes that 11 off-street spaces are required and that 8 off-street parking spaces will be provided.
- The applicant must seek this parking reduction request as a variance since the maximum reduction authorized by this code for a special exception to off-street parking regulations is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A).
- According to DCAD, the “improvements” for property addressed at 12920 Preston Road is a “commercial building” built in 1984 with 994 square feet.
- The subject site is flat, slightly irregular in shape, and (according to the application) is 0.293 acres (or approximately 12,800 square feet) in area. The site is zoned RR.
- On February 6, 2019, the Sustainable Development Department Senior Engineer submitted a review comment sheet marked “Recommends denial” with the following comments: “The average parking supply data (provided by applicant) exceeds the request. National average parking demand for convenience stores exceeds the request. The proposed parking layout conflicts with access to underground fuel storage”.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the off-street parking 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 RR zoning classification.
- If the Board were to grant the variance, it would not be 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 RR zoning classification.
- If the Board were to grant this request, and impose the submitted site plan as a condition, the applicant could replace the existing structure with a larger one with the same uses and provide only 8 (or 73 percent) of the 11 required off-street parking spaces on the subject site.

**GENERAL FACTS/ STAFF ANALYSIS (special exception to the landscape regulations):**

- This request for a special exception to the landscape regulations focuses on replacing the existing structure on the site with a larger one, and not fully meeting the landscape regulations, more specifically, not fully meeting the street buffer zone, street tree, and design option requirements.
- 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).
- While the applicant submitted an original landscape plan in conjunction with this request, the City of Dallas Chief Arborist submitted a memo that pertains to a revised landscape plan submitted by the applicant later in the process (see Attachment B).
- The Chief Arborist's memo states the following with regard to "request":
  - The applicant is requesting a special exception to the landscaping regulations of the 2018 Article X ordinance in the Dallas Development Code. The revised alternative landscape plan is for a property under renovation with a new structure and existing street frontage conditions controlled by TXDoT.
- The Chief Arborist's memo states the following with regard to "provision":
  - The western and northern portion of the property was significantly reduced for right turn lane provisions with highway improvements. A landscape area with grass lawn which existed until 2012 was removed. The site is currently paved to the new constructed sidewalk with a large portion being owned by TXDoT.
  - An ONCOR transmission tower is positioned at the southwest corner of the property. This aspect restricts planting large trees in the area of influence of the lines due to utility company policies. City ordinance would authorize a reduction

- to small trees. Large evergreen shrubs are provided alongside the dumpster screen and the southern view.
- The required three site trees are provided (10" sweetgum for 2 trees, and new cedar elm).
- Parking lot requirements are not applicable due to limited parking spaces (< 20).
- The Chief Arborist's memo states the following with regard to "deficiencies":
  - The street buffer zone is applied only at the southwest and northeast corners.
  - Street trees are not provided.
  - Design options: 10 points required. The plan provides 3 pts. for color of pavement and 1 point for additional large shrubs in the front yard. Screening of parking is limited to two locations.
- The Chief Arborist's memo states the following with regard to "recommendation":
  - The chief arborist recommends approval of the revised alternate landscape plan provided on February 6, 2019, on the basis that strict compliance with the full requirements of 51A-10.100 and 51A-10.120 will unreasonably burden the continued use of the commercial property under renovation and with the continued established use. The exception would not adversely affect neighboring properties.
- 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 revised alternate landscape plan as a condition to the request, the approval would provide exception to not fully meeting the landscape regulations – landscape requirements only triggered to be provided on the site because of the applicant's proposal to enlarge the existing structure on it.

**TIMELINE:**

- December 18, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 8, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 9, 2019: The Board Senior Planner emailed the applicant's representative the following information:
- a copy of the application materials including the Building Official's report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the January 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: The Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

February 6, 2019: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked “Recommends denial” with the following comments: “The average parking supply data (provided by applicant) exceeds the request. National average parking demand for convenience stores exceeds the request. The proposed parking layout conflicts with access to underground fuel storage”.

February 7, 2019: The City of Dallas Chief Arborist submitted a memo regarding the applicant’s revised landscape plan (see Attachment B).

February 8, 2019: The applicant submitted additional information to the Sustainable Development and Construction Department Board of Adjustment Senior Planner beyond what was submitted with the original application (see Attachment C and D). Note that the document labeled “Attachment C” was not factored into the staff recommendation since it was submitted after the February 5<sup>th</sup> staff review team meeting, however the document labeled “Attachment D” (a revised landscape plan) was factored into the staff recommendation because the applicant had been submitted it to the Chief Arborist at a time that allowed him to consider and comment on it.

**BOARD OF ADJUSTMENT ACTION: February 20, 2019**

**APPEARING IN FAVOR:**

Vaneet Duggal, 12920, Preston Road, Dallas, TX  
 Yagnesh (Jack) Jayswal, 13601 Preston Road,  
 #810, Dallas, TX  
 Norman Patten, 413 Cedar Street, Cedar Hill, TX  
 Jeff Flatt, 12969 Preston Road, Dallas, TX

**APPEARING IN OPPOSITION:**

Johnathan Vinson, 2323 Ross Avenue #600,  
 Dallas, TX  
 Rebecca Keener, 12900 Preston Road, #150,  
 Dallas, TX

MOTION 1 of 2: Hounsel

I move that the Board of Adjustment, in request No. BDA 189-023, on application of Samina Jamal, **deny** the off-street parking regulations variance **without** 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, **and** that it is not a restrictive 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** is a self-created or personal hardship.

SECONDED: Sahuc

AYES: 5 - Hounsel, Beikman, Sahuc, Hampton, Perkins

NAYS: 0

MOTION PASSED: 5 – 0 (Unanimously)

MOTION 2 of 2: Sahuc

I move that the Board of Adjustment, in Appeal No. BDA 189-023, on application of Samina Jamal, **grant** the request of this applicant for a special exception to the landscape requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that (1) strict compliance with the requirements of the 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.

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: Hounsel

AYES: 0

NAYS: 5- Hounsel, Beikman, Sahuc, Hampton, Perkins

MOTION FAILED: 0 – 5 (Unanimously)

#2 MOTION 2 of 2: Sahuc

I move that the Board of Adjustment, in request No. BDA 189-023, on application of Samina Jamal, **deny** the off-street parking regulations variance **without** 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, **and** that it is not a restrictive 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** is a self-created or personal hardship.

SECONDED: Hounsel

AYES: 5 - Hounsel, Beikman, Sahuc, Hampton, Perkins

NAYS: 0

MOTION PASSED: 5 – 0 (Unanimously)

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MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Perkins

AYES: 5 – Hounsel, Beikman, Sahuc, Hampton, Perkins

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

**2:55 P.M.** Board Meeting adjourned for **February 20, 2019**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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