

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, MAY 15, 2017**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Phil Foster, regular member, Cheri Gambow, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Phil Foster, regular member, Cheri Gambow, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Todd Duerksen, Dev. Code Specialist, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Todd Duerksen, Dev. Code Specialist, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

11:13 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 15, 2017** docket.

1:07 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, April 17, 2017 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2017

MOTION: None

The minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA156-120(JM)

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 6 months beyond the 180 days from the Board of Adjustment Panel C’s favorable action on a request for a variance to the to the front yard setback regulations of 8’ granted (with a condition) on December 12, 2016.

LOCATION: 5130 Radbrook Place

APPLICANT: Robert Reeves

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 for and is granted (by the Board of Adjustment) 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:

December 12, 2016: The Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 8' and imposed the following condition: Compliance with submitted site plan is required. The case report stated that this request was made to construct and maintain a structure, part of which is located 32' from the site's front property line along Northwest Highway, or 8' into the 40' front yard setback. (See Attachment A for documents related to this application).

May 1, 2017: The applicant emailed the Board Administrator a request to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 6 months beyond the 180 days that the applicant had to do so from the December 12, 2016 favorable action of Board of Adjustment Panel C regarding BDA156-120. The Board Administrator emailed the applicant acknowledging his request (see Attachment B).

The applicant was emailed the following additional 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 BDA156-120; and
- The Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

May 2, 2017: 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 C).

BOARD OF ADJUSTMENT ACTION: MAY 15, 2017

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Bartos

I move to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 6 months beyond the 180 days from the Board of Adjustment Panel C's favorable action on a request for a variance to the to the front yard setback regulations of 8' granted (with a condition) on December 12, 2016.

SECONDED: Foster

AYES: 4 – Richardson, Foster, Gambow, Bartos

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-048(SL)

BUILDING OFFICIAL’S REPORT: Application of Steven Wood for a variance to the front yard setback regulations at 4801 N. Lindhurst Avenue. This property is more fully described as Lot 1, Block 1/5531, and is zoned R-1ac(A), which requires a front yard setback of 40 feet. The applicant proposes to construct and maintain a structure and provide a 17 foot front yard setback, measured at the foundation with a roof eave not to exceed 1 foot, which will require a 23 foot variance to the front yard setback regulations.

LOCATION: 4801 N. Lindhurst Avenue

APPLICANT: Steven Wood

REQUEST:

A request for a variance to the front yard setback regulations of 23’ is made to construct and maintain a two-story single family home structure, part of which is to be located 17’ from one of the site’s two front property lines (Lennox Lane) or 23’ into this 40’ front yard setback on a site that is undeveloped.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, 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:

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-1ac(A) zoning district in that it is restrictive in area due to having two, 40' front yard setbacks, and only approximately 37,000 square feet which is less than the 43,560 square foot area of most lots in this R-1ac(A) zoning district.
- Furthermore, the applicant provided information documenting that the square feet of the dwelling on the site is 11,018 square feet and is commensurate with development found on other properties in the same R-1ac(A) zoning where the average of 13 other properties identified by the applicant is 11,814 square feet.
- Lastly granting this variance is not contrary to public interest in that the front yard in which the encroachment is imposed (Lennox Lane) is only a front yard because it is the shorter of the two frontages and that there is no continuity of the established front yard setback along this street frontage since only one lot besides the subject site is in this block and it fronts northward to Dorset Road.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-1ac(A) (Single family residential 1 acre)
<u>North:</u>	R-1ac(A) (Single family residential 1 acre)
<u>South:</u>	R-1ac(A) (Single family residential 1 acre)
<u>East:</u>	R-1ac(A) (Single family residential 1 acre)
<u>West:</u>	R-1ac(A) (Single family residential 1 acre)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The request for a variance to the front yard setback regulations of 23' focuses on constructing and maintaining a two-story single family home structure with approximately 8,500 of "conditioned" square feet, part of which is to be located 17' from one of the site's two front property lines (Lennox Lane) or 23' into this 40' front yard setback on a site that is undeveloped.

- The property is located in an R-1ac(A) zoning district which requires a minimum front yard setback of 40’.
- The subject site is located at the northeast corner of Lennox Lane and N. Lindhurst Avenue.
- Given the R-1ac(A) single family zoning and location of the corner lot subject site, it has two 40’ front yard setbacks – a front yard setback along Lennox Lane (the shorter of the two frontages of the subject site which is always a front yard in this case) and a front yard setback along N. Lindhurst Avenue, (the longer of the two frontages which is typically considered a side yard where on this R-1ac(A) zoned property where a 10’ side yard setback is required). However the site has a front yard setback along N. Lindhurst Avenue in order to maintain continuity of the established front yard setback along this street frontage where properties to the east of the subject site “front” on N. Lindhurst Avenue.
- A revised site plan has been submitted indicating that a portion of the structure is located as close as 17’ from the Lennox Lane front property line or 23’ into this 40’ front yard setback. (The submitted revised site plan shows the proposed home to be in compliance with the required front yard setback on N. Lindhurst Avenue).
- Revised floor plans have been submitted indicating the following square footage calculations:
 - First floor: 7,414 square feet
 - Second floor: 1,164 square feet
 - Garage: 1,561 square feet
 - Covered porch: 197 square feet
 - Covered patio: 682 square feet
 - Sq ft under room: 11,018 square feet
 - Conditioned square feet: 8,578 square feet
- The applicant has a document stating that the “square feet of dwelling” on the site is 11,018. The average “square feet of dwelling” of 13 other properties on this document is 11,814.
- According to DCAD records, there is no main or additional improvement listed for property addressed at 4801 N. Lindhurst Avenue.
- The subject site is flat and rectangular in shape (approximately 251’ x 161’), and according to the submitted application is 0.86 acres (or approximately 37,000 square feet) in area. The site is zoned R-1ac(A) where lots are typically 1 acre (or 43,560 square feet) in area.
- Most lots in the R-1ac(A) zoning district have one 40’ front yard setback, two 10’ side yard setbacks, and one 10’ rear yard setback; this site has two 40’ front yard setbacks and two 10’ side yard setbacks.
- Since the proposed home is to be located 17’ from the Lennox Lane property line, no variance to setback regulations would be required if Lennox Lane were a side yard.
- The approximately 161’ wide subject site has 111’ of width left for development once a 40’ front yard setback is accounted for on the south and a 10’ side yard setback is accounted for on the north. If this lot were more typically with one front yard, two side yards, and one rear yard, the lot would have 141’ of width left for development.
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the front 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 R-1ac(A) 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 R-1ac(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted revised site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document— which in this case is a structure that would be located as close as 17’ from the site’s Lennox Lane front property line (or as much as 23’ into this Lennox Lane 40’ front yard setback).

Timeline:

February 16, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 11, 2017: 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 April 26th deadline to submit additional evidence for staff to factor into their analysis; and the May 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.

April 26, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 2, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Director of Sustainable Development and Construction, the Building

Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department 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: MAY 15, 2017

APPEARING IN FAVOR: Steven Wood, P.O. Box 3293, Forney, TX
Audrey Tinker, 5924 Royal Lane, Suite 150, Dallas TX
Chad Barrett, 5924 Royal Lane, Dallas, TX
Danny Sipes, P.O. Box 3293, Forney, TX

APPEARING IN OPPOSITION: No one

MOTION: Gambow

I move that the Board of Adjustment, in Appeal No. **BDA 167-048**, on application of Steven Wood, **grant** the 23-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: Bartos

AYES: 4 – Richardson, Foster, Gambow, Bartos

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-056(SL)

BUILDING OFFICIAL’S REPORT: Application of Dustin Wentz for a special exception to the tree preservation regulations at 1700 Woody Road. This property is more fully described as an unplatted 78.211 acre tract in Block 8813 and is zoned R-7.5(A), which requires mandatory landscaping. The applicant proposes to construct structures and provide an alternate plan for tree mitigation, which will require a special exception to the tree preservation regulations.

LOCATION: 1700 Woody Road

APPLICANT: Dustin Wentz

REQUEST:

A request for a special exception to the tree preservation regulations is made to remove and/or replace protected trees on a site that proposed to be a single family residential development, and not fully meet the tree preservation regulations, more specifically, the regulation related to timing in which mitigation must occur from the date of removal of trees.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

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; 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:

- The official recording of a conservation easement on the property be completed by March 29, 2019, and all other required tree mitigation must be completed by September 30, 2020.

Rationale:

- Staff concurs with the Chief Arborist who supports the request in that the requirements of the ordinance would place an unreasonable burden on the use of the property.

BACKGROUND INFORMATION:

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: R-7.5(A)(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 approximately 78 acre subject site is undeveloped. The areas to the north, east, south, and west appear to be either undeveloped or developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the tree preservation regulations focuses removing and/or replacing protected trees on a site that proposed to be a single family residential development, and not fully meeting the tree preservation regulations, more specifically, the regulation related to timing in which mitigation must occur from the date of removal of trees.
- The Dallas Development Code requires full compliance with the landscape and tree preservation 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 states the applicant is requesting a special exception to the tree preservation regulations, specifically for the provision of timing (Sec. 51A-10.134(5)). According to the application, and in an amending attached document dated May 4th, the request would seek to extend the completion date of tree mitigation for the 78 acre residential subdivision development beyond the required 18 month maximum period allotted by ordinance to no later than September 30, 2020.
- The Chief Arborist's memo states the following with regard to provisions:
 - The applicant is proposing to fulfill all other provisions of tree mitigation as required in 10.134. The tree replacement would be tentatively accomplished in phases through the following schedule:
 - Conservation easement – completion of recorded easement by March 29, 2019.
 - 2nd phase – Planting start: April 2018 Completion: October 31, 2019

- 3rd phase – Planting start: October 2019 Completion: September 30, 2020
- The applicant states all mitigation will be completed by planting a minimum of 3 trees (2" caliper minimum) per lot, establishing a conservation easement sufficient for a reduction of up to 65% of the overall mitigation, and by resolving all additional mitigation with payment to the Reforestation Fund, or by the other means of replacement approved by ordinance, by a September 30, 2020.
- The Chief Arborist's memo states the following with regard to deficiency:
 - The property would be deficient only in full compliance with Sec. 51A-10.134 for timing. This requires that all tree mitigation be resolved within an 18 month period from the date of the tree removal application, regardless of the scale of development.
- The City of Dallas Chief Arborist recommends approval of the request because the requirements of the ordinance would place an unreasonable burden on the use of the property. If approved, I recommend only the condition that the official recording of a conservation easement on the property be completed by March 29, 2019, and all other required tree mitigation must be completed by September 30, 2020.
- If the board chooses to approve this request and impose the staff suggested condition to the request, the applicant would be provided exception to full compliance with the tree preservation regulations: the timing in which protected trees removed on the property must be mitigated.

Timeline:

- March 3, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 11, 2017: 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 April 26th deadline to submit additional evidence for staff to factor into their analysis; and the May 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.
- May 2, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Director of Sustainable Development and Construction, the Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building

Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

May 5, 2017: The City of Dallas Chief Arborist submitted a memo (along with an attachment from the applicant) regarding this request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: MAY 15, 2017

APPEARING IN FAVOR: Dustin Wentz, 1700 Woody Road, Dallas, TX
Stephanie Sunici, 500 W 7th, Ste 350, Ft Worth, TX

APPEARING IN OPPOSITION: Bobby Clark, 3011 E. Stark Rd., Seagoville, TX
Joan Cowan, 318 E. Stark Rd, Seagoville, TX

MOTION: Foster

I move that the Board of Adjustment, in Appeal No. **BDA 167-056**, on application of Dustin Wentz, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the tree preservation requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. The official recording of a conservation easement on the property be completed by March 29, 2019.
2. All other required tree mitigation must be completed by September 30, 2020.

SECONDED: Bartos

AYES: 4 – Richardson, Foster, Gambow, Bartos

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-062(SL)

BUILDING OFFICIAL’S REPORT: Application of James A. Watt, represented by John Nedderman, for a special exception to the single family use regulations at 9823 Preston Road. This property is more fully described as Lot 4, Block 2/5515, and is zoned R-10(A), which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit, which will require a special exception to the single family zoning use regulations.

LOCATION: 9823 Preston Road

APPLICANT: James A. Watt
Represented by John Nedderman

REQUEST:

A request for a special exception to the single family use development standard regulations is made to construct and maintain a 2-story recreation addition structure /additional “dwelling unit” structure on a site developed with a 2-story main single family home/dwelling unit structure.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE DEVELOPMENT STANDARDS REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:

The board may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-10(A) (Single family district 10,000 square feet)
<u>North:</u>	R-10(A) (Single family district 10,000 square feet)
<u>South:</u>	R-10(A) (Single family district 10,000 square feet)
<u>East:</u>	R-10(A) (Single family district 10,000 square feet)
<u>West:</u>	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:

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 for a special exception to the single family use development standard regulations focuses on constructing and maintaining a 2-story recreation addition structure /additional “dwelling unit” structure on a site developed with a 2-story main single family home/dwelling unit structure.
- The site is zoned R-10(A) where the Dallas Development Code permits one dwelling unit per lot.
- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- The Dallas Development Code defines “kitchen” as “any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities.”
- The Dallas Development Code defines “bathroom” as “any room used for personal hygiene and containing a shower or bathtub, or containing a toilet and sink.”
- The Dallas Development Code defines “bedroom” as “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining

rooms and living rooms, and all dens, game rooms, sun rooms, and other similar rooms are considered bedrooms.”

- The submitted site plan denotes the locations of two building footprints, the larger of the two denoted as “existing two story residence” and the smaller of the two with denoted as “recreation addition”.
- The submitted floor plan of the “recreation addition” denotes a number of rooms that Building Inspection has determined makes it an additional dwelling unit - that is per Code definition: “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- This request centers on the function of what is proposed to be inside the smaller structure on the site – the “recreation addition” structure, specifically its collection of rooms.
- On March 7, 2017, the applicant emailed the Board Administrator the following: “As the general building contractor I can represent to the Board with certainty that, should our request for an exception be denied, the proposed Recreational Structure can be constructed and maintained merely with the modifications to function/inside use” (see Attachment A).
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve this request, the Board may choose to impose a condition that the applicant comply with the site plan if they feel it is necessary to ensure that the special exception will not adversely affect neighboring properties. But granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

Timeline:

March 21, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 11, 2017: 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 April 26th deadline to submit additional evidence for staff to factor into their analysis;

- and the May 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.

April 11, 2017: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 2, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Director of Sustainable Development and Construction, the Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department 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: MAY 15, 2017

APPEARING IN FAVOR:

APPEARING IN OPPOSITION:

MOTION: Foster

I move to grant that the Board of Adjustment grant application **BDA 167-062(SL)** 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:

- The applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

SECONDED: Bartos

AYES: 4 – Richardson, Foster, Gambow, Bartos

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-052(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates to appeal the decision of the administrative official at 6027 Vanderbilt Avenue. This property is more fully described as Lot 7 & part of Lot 6, Block 8/2853, and is zoned CD 11, which requires compliance with conservation district architectural standards. The applicant proposes to appeal the decision of an administrative official in denying the approval of a conservation district work review.

LOCATION: 6027 Vanderbilt Avenue

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request is made to appeal the decision of the administrative official, in the particular application, the Building Official. The submitted application states that “an appeal of an administrative official’s decision” is made and that “The single family structure, built in 1938, had single hung windows. We are requesting to allow replacement windows to be single hung windows”.

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: CD 11 (Conservation District)
- North: R-7.5(A) (Single family residential, 7,500 square feet)
- South: CD 11 (Conservation District)
- East: CD 11(Conservation District)
- West: CD 11(Conservation District)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

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

Timeline:

February 22, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 11, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

April 11, 2017: 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 April 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 May 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."

May 2, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Director of Sustainable Development and Construction, the Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction

Department Senior Planner, and the Assistant City Attorney to the Board.

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

May 3, 2017: The Assistant City Attorney assisting the Building Official on the application submitted additional documentation on this application to the Board Administrator (see Attachment A).

May 5, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: MAY 15, 2017

APPEARING IN FAVOR: Rob Baldwin, 6035 Vanderbilt Ave., Dallas, TX
Jonathan Shopay, 3904 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Amy Musser, 1500 Marilla St., Dallas, TX
William Hersch, 320 E. Jefferson, Dallas, TX

MOTION: Bartos

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. BDA **167-052**, on application of Robert Baldwin, 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 **reverse** the decision of the administrative official and **grant** the relief requested by this applicant.

SECONDED: Foster

AYES: 4 – Richardson, Foster, Gambow, Bartos

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-058(SL)

BUILDING OFFICIAL’S REPORT: Application of Greg Baten, represented by Kevin Clark, for a special exception to the fence standards at 4001 Turtle Creek Boulevard. This property is more fully described as Lot 11, Block 1/2062, and is zoned PD 193 (R-7.5), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain an 8 foot 1 inch high fence in a required front yard, which will require a 4 foot 1 inch special exception to the fence standards.

LOCATION: 4001 Turtle Creek Boulevard

APPLICANT: Greg Baten
Represented by Kevin Clark

REQUEST:

A request for a special exception to the fence standards related to height of 4' 1" is made to maintain a fence (a solid CMU fence ranging in height from 70" or 5' 8" to 97" or 8' 1") higher than 4' in height in one of the site's two front yard setbacks (Avondale Avenue) on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence standards 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: PD 193 (R-7.5 Subdistrict) (Planned Development, Single family district 7,500 square feet)
North: PD 193 (R-7.5 Subdistrict) (Planned Development, Single family district 7,500 square feet)
South: PD 350 (Planned Development)
East: PD 193 (R-7.5 Subdistrict) (Planned Development, Single family district 7,500 square feet)
West: PD 193 (R-7.5 Subdistrict) (Planned Development, Single family district 7,500 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA078-153, Property at 4001 Turtle Creek Boulevard (the subject site) On November 17, 2008, the Board of Adjustment Panel C denied a request for a special exception to the fence height regulations of 7' 8" without prejudice. The case report stated that the request was made to construct and maintain an 11' 7" solid fence along the Avondale Avenue frontage.

GENERAL FACTS/STAFF ANALYSIS:

- The request for a special exception to the fence standards related to height of 4' 1" focuses on maintaining a solid CMU fence ranging in height from 70" or 5' 8" to 97" or 8' 1") higher than 4' in height in one of the site's two front yard setbacks (Avondale Avenue) on a site developed with a single family home.
- The subject site is zoned PD 193 (R-7.5 Subdistrict) which requires a 25' front yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is located at the northwest corner of Avondale Avenue and Turtle Creek Boulevard.
- Given the single family zoning and location of the corner lot subject site, it has two 25' front yard setbacks – a front yard setback along Turtle Creek Boulevard (the shorter of the two frontages of the subject site which is always a front yard in this case) and a front yard setback along Avondale Avenue, (the longer of the two frontages which is typically considered a side yard where on this R-7.5 Subdistrict zoned property a 9' high fence could be erected by right). However the site has a front yard setback along Avondale Avenue in order to maintain continuity of the established front yard setback along this street frontage where lots to the west of the subject site "front" on Avondale Avenue.
- The applicant has submitted a revised site plan/elevation of the proposal/existing fence in the Avondale Avenue front yard setback with notations indicating that the proposal reaches a maximum height of 97" or 8' 1". (The submitted revised site plan only denotes a fence higher than 4' in the Avondale Avenue front yard setback).
- The submitted revised site plan/elevation represents the following additional information:
 - The proposal/existing fence is represented as being approximately 64' in length parallel to the street, and approximately 20' in length perpendicular to the street on the west side of the property in the front yard setback.
 - The proposal/existing fence is represented as being located approximately 5' from the Avondale Avenue front property line or approximately 21' from the Avondale Avenue pavement line.
 - A row of "existing Holly hedge" is located on the property on the street side of the fence on Avondale Avenue.

- No single family lot fronts the proposal. Immediately south of the subject site is single family development where the homes in this gated front south. This gated development zoned PD 350 has an approximately 6' high solid fence parallel to Avondale Avenue.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no fence that appeared to be above 4' in height and located in a front yard setback other than the approximately 6' high solid fence immediately south of the subject site.
- As of May 5, 2017, no letters had been submitted in support of the request, and one letter had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence standards of 4' 1" will not adversely affect neighboring property.
- Granting this special exception of 4' 1" with a condition imposed that the applicant complies with the submitted revised site plan/elevation would require the proposal/existing fence exceeding 4' in height in the Avondale Avenue front yard setback to be maintained in the location and of the heights and materials as shown on this document.

Timeline:

- March 13, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 11, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. 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".
- April 11, 2017: The Board Administrator emailed the following information to the applicant's representative:
- 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 April 26th deadline to submit additional evidence for staff to factor into their analysis; and the May 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."

April 24, 2017: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 2, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Director of Sustainable Development and Construction, the Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department 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: MAY 15, 2017

APPEARING IN FAVOR: Kevin Clark, 10100 N Central Expwy, Dallas, TX
Bart Fassino, 4344 Avondale Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Bartos

I move that the Board of Adjustment, in Appeal No. **BDA 167-058**, on application of Greg Baton, represented by Kevin Clark, **grant** the request of this applicant to construct and maintain an eight-foot one-inch high fence as a special exception to the height requirement for fences contained 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 the submitted revised site plan/elevation is required.

SECONDED: Foster

AYES: 4 – Richardson, Foster, Gambow, Bartos

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION: Richardson

I move to adjourn this meeting.

SECONDED: Foster

AYES: 4 – Richardson, Foster, Gambow, Bartos
NAYS: 0 -
MOTION PASSED: 4 – 0 (unanimously)

3:14 P. M. - Board Meeting adjourned for **May 15, 2017**

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.