

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, DECEMBER 11, 2017**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member, Ryan Behring, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member, Ryan Behring, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director of Sustainable Development and Construction, Steve Long, Board Administrator, Jennifer Munoz, Senior Planner, Kanesia Williams, Asst. City Atty., David Navarez, Engineer, Charles Trammell, Development Code Specialist, Todd Duerksen, Dev. Code Specialists, Phil Erwin, Chief Arborist, Lloyd Denman, Asst. Director, Engineering, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: David Cossum, Director of Sustainable Development and Construction, Steve Long, Board Administrator, Jennifer Munoz, Senior Planner, Kanesia Williams, Asst. City Atty., Charles Trammell, Development Code Specialist, Todd Duerksen, Dev. Code Specialists, Phil Erwin, Chief Arborist, Lloyd Denman, Asst. Director, Engineering, and Trena Law, Board Secretary

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **December 11, 2017** docket.

1:25 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, November 13, 2017 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: DECEMBER 11, 2017

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA167-132(SL)

BUILDING OFFICIAL'S REPORT: Application of John Chisolm, represented by Shea Kirkman, for a special exception to the landscape regulations at 4104 Duncanville Road. This property is more fully described as Lot 3, Block A/8032, and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 4104 Duncanville Road

APPLICANT: John Chisolm
Represented by Shea Kirkman

REQUEST:

A request for a special exception to the landscape regulations is made to construct and maintain a commercial/office use/structure, and not fully meet the landscape regulations, more specifically, to not meet street tree location requirements on the subject site.

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:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the request concluding that strict compliance with the requirements of Article X will unreasonably burden the use of the property (the location of easements on the site does not allow the applicant to comply with street tree location requirements), and that the special exception will no negative impacts on neighboring 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 subject site is undeveloped. The area to the north is developed with an office/warehouse use, and the areas to the east, south, and west are undeveloped.

Zoning/BDA History:

1. BDA134-119, Property at 4243 Duncanville Road (three lots south of subject site)

On December 15, 2014, the Board of Adjustment Panel C granted a request for a special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition. The case report states that the request was made to maintain a motor vehicle fueling station use (Questar Fueling Station), and not fully meet the landscape regulations - more specifically, according to the City of Dallas Chief Arborist, the submitted alternate landscape plan did not provide the required street trees factored at one tree per 50 linear feet of frontage within 30 feet of the curb.

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the landscape regulations focuses on constructing and maintaining a commercial/office use/structure, and not fully meeting the landscape regulations, more specifically, not providing street trees in the required location within 30' from the back of the street curb.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A).
- The Chief Arborist's memo states the following with regard to "request":
 - The applicant requests a special exception to the landscape regulations in Article X for the construction of a non-residential structure. The special exception would allow for required street trees to be planted more than 30 feet from the back of the street curb (Sec. 51A-10.125(b)(4)).
- The Chief Arborist's memo states the following with regard to "provision":
 - The applicant is proposing to provide an alternative landscape plan which would comply with Article X with the exception of street tree location requirements. The street buffer design standard is provided on the plan which will provide one large non-canopy tree with each required canopy tree. The property will also retain a 3.5 acre preserved wooded area with a floodway easement.

- The Chief Arborist’s memo states the following with regard to “deficiencies”:
 - The property would not provide street trees within 30 feet of the curb, as required by ordinance. Two large easements forces trees to the edge of the easement and away from Duncanville Road. The easement areas in the front yard will be maintained with permeable groundcover.
- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because strict compliance with the Article X regulations will unreasonably burden the use of the property, and that the special exception will have no negative impacts on 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 alternate landscape plan as a condition to the request, the site would be provided exception from providing the street trees in the required location on the subject site.

Timeline:

September 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.

November 3, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 6, 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 November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 1st 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.

November 27, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, 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.

November 30, 2017: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: DECEMBER 11, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gambow

I move to grant that the Board of Adjustment grant application **BDA 167-132(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:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Agnich

AYES: 5 - Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-134(SL)

BUILDING OFFICIAL’S REPORT: Application of Vaughn C. Williams for a special exception to the side yard setback regulations for a carport at 1614 Melbourne Avenue. This property is more fully described as Lot 5, Block 10/4750, and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a carport in a required side yard and provide a 2 foot 6 inch setback, which will require a 2 foot 6 inch special exception to the side yard setback regulations.

LOCATION: 1614 Melbourne Avenue

APPLICANT: Vaughn C. Williams

REQUEST:

A request for a special exception to the side yard setback regulations of 2' 6" is made to maintain a carport located 2' 6" from the site's eastern side property line or 2' 6" into this 5' required side yard setback on a site developed with a single family home structure/use.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is, when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the side yard setback of 2' 6" focuses on maintaining an approximately 290 square foot carport located 2' 6" from the site's eastern side property line or 2' 6" into the site's eastern 5' required side yard setback, on a site developed with a single family home structure/use.
- A 5' side yard setback is required in the R-7.5(A) zoning district.
- The submitted a site plan and elevation indicates the size and materials of the carport, and its location 2' 6" from the site's eastern side property line.
- The submitted site plan represents the following:
 - The carport is approximately 24' in length and approximately 12' in width (approximately 290 square feet in total area) of which approximately 20 percent is located in the eastern 5' side yard setback.
- The submitted elevation represents the following:
 - 7' 8" in height
 - 8" C Purlin 14 Gauge (8" x 2.5") sheet metal fascia roof
 - 4" 14 Gauge square tubing columns
- The Board Administrator conducted a field visit of the area approximately 500 feet east and west of the subject site and noted no other carports that appeared to be in a side yard setback.
- As of December 1, 2017, two letters had been submitted in support of the request, and no letters had been submitted in opposition to this application.
- The applicant has the burden of proof in establishing the following:
 - that granting this special exception to the side yard setback regulations of 2' 6" will not have a detrimental impact on surrounding properties.
- Granting this request and imposing the following conditions would require the carport to be maintained in the location and of the heights and materials as shown on these documents:
 1. Compliance with the submitted site plan and elevation is required.
 2. The carport structure must remain open at all times.
 3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
 4. All applicable building permits must be obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.

Timeline:

September 28, 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.

November 3, 2017: The Board of Adjustment Secretary r assigned this case to Board of Adjustment Panel C.

November 6, 2017: The Board Administrator 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 November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 1st 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."

November 27, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, 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.

November 29, 2017: The Board Administrator emailed the applicant the following information:

- when the board grants this type of application, they typically impose the applicant's submitted site plan and elevation as a condition to the request;
- that he contact Building Inspection prior to his hearing on December 11th to establish that they would be able to issue a permit for the carport in the side yard setback if the board were to grant your request and impose your submitted site plan and elevation as a condition, and that for any reason a determination was made that plans would need to be amended to meet building code, he could submit a revised site plan and/or elevation to staff to your December 11th hearing.

BOARD OF ADJUSTMENT ACTION: DECEMBER 11, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gambow**

I move to grant that the Board of Adjustment grant application **BDA 167-134(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:

- Compliance with the submitted site plan and elevation is required.
- The carport structure must remain open at all times.
- No lot-to-lot drainage is permitted in conjunction with this carport special exception.
- All applicable building permits must be obtained.
- No item (other than a motor vehicle) may be stored in the carport.

SECONDED: **Agnich**

AYES: 5 - Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-136(SL)

BUILDING OFFICIAL’S REPORT: Application of Steven Wood for a variance to the front yard setback regulations at 454 W. Greenbriar Lane. This property is more fully described as Lot A, Block 6/4640, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 16 foot front yard setback, which will require a 9 foot variance to the front yard setback regulations.

LOCATION: 454 W. Greenbriar Lane

APPLICANT: Steven Wood

REQUEST:

A request for a variance to the front yard setback regulations of 9’ is made to add and maintain a 2nd floor addition to an existing one-story single family home structure (a structure that is in part a nonconforming structure and in part a structure that is a result of a variance granted by the Board of Adjustment in 2007: BDA067-131), part of which

would be located 16' from one of the site's two front property lines (Woodlawn Avenue) or 9' into this 25' front yard setback.

STANDARD FOR A VARIANCE:

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

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-7.5(A) zoning district in that it is restrictive in area due to having two, 25' front yard setbacks when most lots in this zoning district have one 25' front yard setback. The 60' wide subject site has 30' of developable width available once a 25' front yard setback is accounted for on the west and a 5' side yard setback is accounted for on the east. If the lot were more typical to others in the zoning district with only one front yard setback, the 60' wide site would have 50' of developable width.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that the total home size of the home with the proposed addition on the subject site at approximately 4,100 square feet is commensurate to 12 other homes in the same R-7.5(A) zoning district that have an average home size of approximately 4,400 square feet.
- Granting the variance does not appear to be contrary to public interest since the addition in the front yard setback would be located farther from the Woodlawn Avenue front property line than the existing structure that is in part a nonconforming structure and in part a structure granted a variance to the Woodlawn Avenue front yard setback in 2007.

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

Zoning/BDA History:

1. BDA067-131, Property located at 454 W. Greenbriar Lane (the subject site)

On September 17, 2007, the Board of Adjustment Panel C granted a variance to the front yard setback regulations of 20' and imposed the following condition: Compliance with the submitted site plan is required.

The case report stated that the variance request was made to construct and maintain a bedroom/bath addition in the site's Woodlawn Avenue 25' front yard setback; the proposed addition would connect an existing single family home to an existing detached garage both of which are located in the Woodlawn Avenue front yard setback as well.

The case report also stated the a scaled site plan has been submitted that showed that the addition would be located 5' from the site's Woodlawn Avenue front property line (or 20' into the 25' front yard setback). This site plan showed that the existing house on the site was located as close as 7' from the front property line and the detached garage was located as close as 8' from the property line. These existing structures were most likely deemed to be nonconforming structures since they were built, according to DCAD, in 1947. The applicant had been apprised of the nonconforming structure provisions in the Dallas Development Code

and had chosen to not seek variances to remedy the existing structures given that unless intentionally destroyed by the owner or his agent, nonconforming structures can be renovated, repaired, rebuilt, or enlarge if the work does not cause the structure to become more nonconforming to as to the yard, lot, and space regulations.

GENERAL FACTS/STAFF ANALYSIS:

- This request for variance to the front yard setback regulations of 9' focuses on adding and maintaining an approximately 760 square foot 2nd floor addition to an existing one-story single family home structure with approximately 1,800 square feet of floor area (a structure that is in part a nonconforming structure and in part a structure that is a result of a variance granted by the Board of Adjustment in 2007: BDA067-131), part of which is to be located 16' from one of the site's two front property lines (Woodlawn Avenue) or 9' into this 25' front yard setback.
- The property is located in an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.
- The subject site is located at the southeast corner of W. Greenbriar Lane and Woodlawn Avenue. Regardless of how the existing structure is oriented to front W. Greenbriar Lane, the subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along W. Greenbriar Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25' front yard setback along Woodlawn Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. But the site's Woodlawn Avenue frontage that functions as a side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots to the south that front/are oriented westward towards Woodlawn Avenue.
- The submitted scaled site plan indicates an "existing residence" footprint located approximately 7' from the Woodlawn Avenue front property line and a "line of second floor addition" on this footprint located 16' from the Woodlawn Avenue front property line or 9' into this 25' front yard setback. (No encroachment is shown or requested to be located in the site's Greenbriar Lane 25' front yard setback).
- According to DCAD records, the "main improvement" for property addressed at 454 W. Greenbriar Lane is structure built in 1947 with 1,906 square feet of living/total area, and that "additional improvements" is a 440 square foot attached garage. Because records show that the main improvement/structure on this site was built in the 1940's, it is assumed that the part of the "existing residence" represented on the submitted site plan is a nonconforming structure.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.

- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The applicant has chosen to seek variance to the front yard setback regulations for only the 2nd floor addition in the Woodlawn Avenue front yard setback, and not to remedy/address the nonconforming aspect of the existing structure in the front yard setback.
- In September of 2007, the Board of Adjustment Panel C granted a variance to the front yard setback regulations of 20' (BDA067-131) construct and maintain a bedroom/bath addition in the site's Woodlawn Avenue 25' front yard setback- an proposed addition that was to connect an existing single family home to an existing detached garage both of which are located in the Woodlawn Avenue front yard setback as well. Part of the existing residence represented on the site plan submitted in conjunction with this application is a result of this variance.
- The site plan denotes that the total living area of the home with the addition is 3,030 square feet (total living of first floor at 2,269 square feet, total living area of second floor at 857 square feet).
- According to calculations made by the Board Administrator from the submitted site plan, approximately 130 square feet of the 2nd floor addition would be located in the Woodlawn Avenue 25' front yard setback.
- The applicant has submitted a document indicating among other things that that the total home size of the home on the subject site with the proposed addition is approximately 4,100 square feet, and the average of 12 other properties in the same zoning is approximately 4,400 square feet.
- The site is somewhat sloped, rectangular in shape (approximately 190' x 60') and 11,400 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The site has two 25' front yard setbacks and two 5' side yard setbacks. Most lots in the R-7.5(A) zoning district have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback.
- Most lots in the R-7.5(A) zoning district have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback; this site has two 25' front yard setbacks and two 5' side yard setbacks.
- The 60' wide subject site has 30' of developable width available once a 25' front yard setback is accounted for on the west and a 5' side yard setback is accounted for on the east. If the lot were more typical to others in the zoning district with only one front yard setback, the 60' wide site would have 50' of developable width.
- No variance would be necessary for the 2nd floor addition if the Woodlawn Avenue frontage were a side yard since the site plan represents that the proposed 2nd floor addition being 16' from the Woodlawn Avenue property line and the side yard setback for properties zoned R-7.5(A) is 5'.
- 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-7.5(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-7.5(A) zoning classification.
- If the Board were to grant the 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 in this case is a 2nd floor addition that would be located 16' from the site's Woodlawn Avenue front property line (or approximately 9' into this 25' front yard setback).
- Note that the applicant is aware that granting the request for a variance to the front yard setback regulations will not provide any relief to the existing nonconforming structure in the front yard setback since the applicant did not request that the Board consider this aspect as part of this application.
- Granting this request for a variance to the front yard setback regulations will not provide any relief to existing noncompliance on the site related to fence standards and/or off-street parking regulations.

Timeline:

September 11, 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.

November 3, 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".

November 6, 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 November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 1st 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.”

November 27, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

November 27, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, 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: DECEMBER 11, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gambow**

I move to grant that the Board of Adjustment grant application **BDA 167-136(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:

- Compliance with the submitted site plan is required.

SECONDED: **Agnich**

AYES: 5 - Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-139(SL)

BUILDING OFFICIAL'S REPORT: Application of Jessica W. Hammons, represented by Erik Thornton, for special exceptions to the fence standards at 1555 San Saba Drive. This property is more fully described as Lot 14, Block L/5319, and is zoned R-10(A), NSO 5, which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards, and to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards.

LOCATION: 1555 San Saba Drive

APPLICANT: Jessica W. Hammons
Represented by Erik Thornton

REQUESTS:

The following requests have been made on a site that is currently developed with a single family home structure:

1. A special exception to the fence standards related to fence height is made to construct and maintain an 8' high solid cedar board-on-board wood fence in one of the site's two 50' front yard setbacks (Old Gate Lane); and
2. A special exception to the fence standards related to fence materials is made to construct and maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned 8' high solid cedar board-on-board wood fence) in the site's Old Gate Lane front yard setback and on this front property line (or less than 5' from this front lot line).

(No request has been made in this application to construct/maintain any structure or fence in the site's San Saba Drive front yard setback).

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.

Zoning:

Site: R-10(A)(NSO 5) (Single family residential 10,000 sq ft)(Neighborhood Stabilization Overlay)
North: R-10(A)(NSO 5) (Single family residential 10,000 sq ft)(Neighborhood Stabilization Overlay)
South: R-7.5(A) (Single family residential 7,500 square feet)
East: R-10(A)(NSO 5) (Single family residential 10,000 sq ft)(Neighborhood Stabilization Overlay)
West: R-10(A)(NSO 5) (Single family residential 10,000 sq ft)(Neighborhood Stabilization Overlay)

Land Use:

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

Zoning/BDA History:

1. BDA167-103(SL), Property located at 1555 San Saba Drive (the subject site)
On September 20, 2017, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of up to 19' and imposed the following condition: Compliance with the submitted site plan is required.
The case report stated that the variance request was made to construct and maintain an approximately 680 square foot accessory structure and an approximately 760 square foot pool structure to be located as close as 19' from one of the site's two front property lines (Old Gate Lane) or as much as 31' into this 50' required front yard setback.

GENERAL FACTS/STAFF ANALYSIS:

- These requests for special exceptions to the fence standards focus on constructing and maintaining an 8' high solid cedar board-on-board wood fence - a fence higher than 4' high in one of the site's two front yard setbacks (Old Gate Lane) and on this front property line or less than 5' from this front lot line.
- The subject site is zoned R-16(A)(NSO 5) which requires a minimum 50' front yard setback. (Prior to the creation of the NSO (Neighborhood Stabilization Overlay) district in 2007, the minimum front yard setback for the site that had been zoned R-10(A) was 30').
- The subject site has two 50' front yard setbacks (one on the northeast along San Saba Drive, the other on the southwest along Old Gate Lane) since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- Regardless of how the home is oriented to front onto San Saba Drive (and "back" to Old Gate Lane), the site has two 50' front yard setbacks where the focus of the

applicant's request in this application is only to construct and maintain a solid fence higher than 4' in height in the site's front yard setback on Old Gate Lane. (No part of the application is made to construct/maintain a fence in the site's San Saba Drive 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 Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
- The submitted site plan denotes the only fence proposed to exceed 4' in height on the subject site is in the Old Gate Lane front yard setback. This fence is proposed to be 8' in height, approximately 100' in length parallel to the street and approximately 50' in length perpendicular to the street on the northwest and southeast sides of the site in this front yard setback.
- The submitted elevation denotes an 8' high cedar board-on-board wood fence.
- The site plan denotes that the proposed fence is located approximately 14' from the pavement line.
- The proposal is located across from single family lots that have side yards along their Old Gate Lane street frontage – lots that front San Leandro Drive and Groveland Drive. Neither of these lots have fences higher than 4' but could have 9' high fences by right since the Old Gate Lane frontage of these lots is a side yard.
- The Board Administrator conducted a field visit of the site and surrounding area along Old Gate Lane and noted two other fences along this street that appeared to be above 4' in height. The two lots immediately southeast of the site have approximately 6' high solid wood fences in their Old Gate Lane frontage with no recorded BDA history.
- As of December 1, 2017, no letters have been submitted in support of or in opposition to these requests.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height over 4' in the Old Gate Lane front yard setback and materials/height of the proposed fence relative to the front lot line will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line to be constructed and maintained in the location and of the heights and materials as shown on these documents –a solid 8' high wood fence in the site's Old Gate Lane front yard setback/front lot line.

Timeline:

October 17, 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.

November 3, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. Even though Board of Adjustment Panel B granted a variance to the front yard setback regulations on this property, the assignment of this application for a fence standard special exception did not conflict 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” – a fence standard special exception request is not the same request as a front yard variance request.

November 6, 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 November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 1st 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.

November 27, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, 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: DECEMBER 11, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gambow**

I move to grant that the Board of Adjustment grant application **BDA 167-139(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:

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

SECONDED: Agnich

AYES: 5 - Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-140(JM)

BUILDING OFFICIAL’S REPORT: Application of Eric Eisenberg, represented by Bob Mirabito, for special exceptions to the fence standards at 10564 Lennox Lane. This property is more fully described as Lot 3, Block 2/5521, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and/or maintain a 6 foot high fence in a required front yard, which will require a 2 foot special exception to the fence standards, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards.

LOCATION: 10564 Lennox Lane

**APPLICANT: Eric Eisenberg
Represented by Bob Mirabito**

REQUEST:

The following requests have been made on a site that is developed with a single family home:

1. A request for a special exception to the fence standards related to fence height of 2’ is made to construct and maintain a fence higher than 4’ in height in the site’s Lennox Lane 40’ front yard setback – a 6’ high wrought iron fence with 6’ high wrought iron swing gates and 6’ high brick columns;
2. A request for a special exception to the fence standards related to fence height of 2’ is made to construct and maintain a fence higher than 4’ in height in the site’s Harrys Lane 40’ front yard setback – a 6’ solid wood fence and a 6’ high wrought iron fence with 6’ high wrought iron sliding gates and 6’ high brick columns;

3. A request for a special exception to the fence standards related to fence materials is made to construct and maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned 6' high solid wood fence along Harrys Lane) located on the Harrys Lane front lot line to the northeast (or less than 5' from this front lot line); and

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 (fence standards):

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

Land Use:

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

Zoning/BDA History:

1. BDA078-061, Property at 10564 Lennox Lane (the subject site) On May 19, 2008, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' and imposed the submitted revised site plan and elevation as a condition. The case report stated the request was made to construct and maintain a 6' high wrought iron fence with 6' 6" high columns and a 5' 7" high entry gate with 8' high stone columns.
2. BDA956-177, Property located at 10615 Lennox Lane (northwest of On April 23, 1996, the Board of Adjustment Panel C reversed the decision of the Building

subject site)

Official, denied a request for a variance to the front yard setback regulations without prejudice, and granted a request for a special exception to the fence height regulations of 4' and imposed the following condition: subject to a revised site plan/elevation and a landscape plan. The revised site plan/elevation and landscape plan are to be submitted to the Board Administrator subject to the condition that the height of the fence at the corner of Harry's Lane and Lennox Lane transitions from 6' 6" at that portion parallel along Lennox Lane to 9' at the column located along Harry's Lane approximately 20' west of the northwest corner of Lennox Lane and Harry's Lane.

The case report stated the requests were made to: 1) appeal the Building Official's decision that the portion of the subject site along Harry's lane is a front yard rather than a side yard; 2) maintain portions of an existing fence along Harry's Lane and a proposed fence along Lennox Lane exceed the maximum permitted height for fences in front yards; and 3) maintain a portion of an existing house and an existing fence along Harry's Lane that do not comply with the maximum setbacks and heights for structures and fences in front yards.

3. BDA078-053, Property at 10453 Lennox Lane (southwest of the subject site)

On April 14, 2008, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 6' and imposed the submitted revised site/elevation as a condition.

The case report stated the request was made to construct and maintain a 6' high open metal fence with 6' 6" high stucco columns and two gates (one at 10' in height, the other at 7' in height) in the front yard setback on a site that was developed with a single family house.

4. BDA989-277, Property located at 10522 Lennox Lane (southeast of subject site)
- On August 24, 1999, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4' and imposed the submitted revised site and elevation plan dated June 1999 as a condition.
- The case report stated the request was made to construct and maintain a 5' high open metal fence with 6' 3" high brick columns and a 7' 6" high gate with 8' high brick columns.

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- The focus of the three requests for special exceptions to the fence standards (two are related to height of up to 2' and one is related to fence materials) is constructing and maintaining **1)** a 6' high wrought iron fence with 6' high wrought iron swinging gates and 6' high brick columns in the site's Lennox Lane 40' front yard setback along the property line; and, **2 & 3)** a 6' high wrought iron fence with 6' high wrought iron sliding gates and 6' high brick columns and a 6' high *solid wood* fence in the site's Harrys Lane 40' front yard setback along the property line on a site developed with a single family home.
- The subject site is zoned R-1ac(A) which requires a 40' 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.
- Additionally, the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
- The site is located at the southeast corner of Lennox Lane and Harrys Lane.
- 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 Harrys Lane, (the longer of the two frontages which is typically considered a side yard where on this R-1ac(A) zoned property where a 9' high fence could be erected by right). However, the site has a front yard setback along Harrys Lane to maintain continuity of the established front yard setback along this street frontage where a home/lot to the east of the subject site "fronts" on Harrys Lane.
- The applicant has submitted a site plan and elevation documents of the proposed fences in the front yard setbacks with notations indicating that the proposal reaches a maximum height of 6'.
- The applicant has submitted a site plan/elevation of the proposal along Harrys Lane with a fence panel having a surface area that is less than 50 percent open and located less than 5' from this front lot line – a 6' high solid wood fence approximately 70' in length located on this front lot line to the northeast.
- The following additional information was gleaned from the submitted site plan:

- Along Lennox Lane: the proposal is represented as being approximately 194' in length parallel to the street and approximately 40' perpendicular to the street on the southwest side of the site in this required front yard; located on the front property line or approximately 19' from the pavement line (according to the applicant and not depicted on the plan); two single family lots front the proposal, both with fences taller than 4' in the front yard setbacks, one of which that appears to be result of fence height special exceptions granted by the Board.
- Along Harrys Lane: the proposal is represented as being approximately 252' in length parallel to the street and approximately 40' perpendicular to the street on the east side of the site in this required front yard; located approximately on the front property line or approximately 15' from the pavement line (according to the applicant and not depicted on the plan); two single family lots front the proposal, one with a fence taller than 4' in the front yard setback that appears to be a result of fence height special exception granted by the Board.
- The Board Senior Planner conducted a field visit of the site and surrounding area and noted several other fences that appeared to be above 4' in height and located in a front yard setback. Four fences noted appear to be a result of special exceptions granted by the Board of Adjustment, including the subject site. (The "Zoning/BDA History" section of this case report provides details on these neighboring fences).
- As of December 1, 2017, 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 4' and to location on Lennox and Harrys Lanes and materials on Harrys Lane will not adversely affect neighboring property.
- Granting these special exceptions to the fence standards related to height of up to 4' and to location and materials in certain areas on the site with a condition imposed that the applicant complies with the submitted site plan/elevation documents, would require the proposal exceeding 4' in height in the front yard setbacks and in some areas solid fence panels on the front lot line to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

October 10, 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.

November 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 6, 2017: The Board Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;

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

November 28, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, 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: DECEMBER 11, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gambow

I move to grant that the Board of Adjustment grant application **BDA 167-140(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:

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

SECONDED: Agnich

AYES: 5 -Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-001(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the off-street parking regulations at 2600 (aka 2604) Main Street. This property is more fully described as Lot 2, Block A/183, and is

zoned PD 269 (Tract A), which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for a commercial amusement (inside) use, and provide 96 of the required 192 off-street parking spaces, which will require a 96 space special exception to the off-street parking regulations.

LOCATION: 2600 (aka 2604) Main Street

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a special exception to the off-street parking regulations of 96 spaces is made to occupy and lease an existing approximately 21,000 square foot vacant structure, and construct and maintain an approximately 3,000 square foot addition with an inside commercial amusement (a bowling alley with 8 bowling lanes) use, and provide 96 (or 50 percent) of the 192 off-street parking spaces required by code.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). 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.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 96 spaces shall automatically and immediately terminate if and when the commercial amusement (inside) is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Assistant Director of Engineering indicated that he has no objections to the applicant's request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 269 (Tract A) (Planned Development)
North: PD 269 (Tract A) (Planned Development)
South: PD 269 (Tract A) (Planned Development)
East: PD 269 (Tract A) (Planned Development)

West: PD 269 (Tract B) (Planned Development)

Land Use:

The subject site is developed with a vacant, approximately 21,000 square foot vacant structure. The area immediately north is a surface parking lot; and the areas to the east, south, and west are developed with a mix of residential and nonresidential uses.

Zoning/BDA History:

1. BDA167-097(SL), Property at 2600 Main Street (the subject site)

On October 16, 2017, the Board of Adjustment Panel C denied a request for a special exception to the off-street parking regulations of 144 spaces without prejudice.
The case report states that the request was made to occupy and lease an existing approximately 21,000 square foot vacant structure, and construct and maintain an approximately 3,000 square foot addition with an inside commercial amusement (bowling alley) use, and provide 48 (or 25 percent) of the 192 off-street parking spaces required by code).
2. BDA012-119, Property at 2600 Main Street (the subject site)

On January 22, 2002, the Board of Adjustment Panel C granted a request for a variance to the off-street parking regulations and imposed the following conditions: 1) compliance with the submitted site plan is required; and 2) that the variances be changed from 15 spaces to 8 spaces.
The case report states that the request for variance to the off-street parking regulations of 15 spaces was made to transition and expand spaces in an existing vacant restaurant/bar structure (a structure that formerly housed the Copper Tank Brewing Company was being transitioned to the American's Pub).
3. BDA956-134, Property at 2600 Main Street (the subject site)

On January 23, 1996, the Board of Adjustment Panel C granted a request for a variance to the off-street parking regulations of 31 spaces needed to complete and maintain a 14,000 square foot restaurant/bar use (Copper Tank

Brewing Company). The Board imposed the following conditions: That this variance terminates in two years or when the zoning regulations applying to this use are amended by the City Council to reduce the number of parking spaces whichever comes first.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on occupying and leasing an existing approximately 21,000 square foot vacant structure, and constructing and maintaining an approximately 3,000 square foot addition with an inside commercial amusement (a bowling alley with 8 bowling lanes) use, and providing 96 (or 50 percent) of the 192 off-street parking spaces required by code.
- While PD 269 specifies off-street parking requirements for certain uses permitted in the zoning district, does not provide a specific off-street parking requirement for the proposed inside commercial amusement use. As a result, the PD ordinance states that the off-street parking requirement for this use is that what is provided in Chapter 51. Chapter 51 requires the following off-street parking requirement:
 - Inside commercial amusement: one space per 100 square feet of floor area.
- The Sustainable Development and Construction Department Assistant Director of Engineering 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 inside commercial inside (bowling alley) use does not warrant the number of off-street parking spaces required, and
 - The special exception of 96 spaces (or a 96 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 96 spaces shall automatically and immediately terminate if and when the commercial amusement inside use is changed or discontinued, the applicant could occupy and lease the existing structure and construct and maintain the addition on the subject site with commercial amusement inside use, and provide 96 (or 50 percent) of the 192 required off-street parking spaces.

Timeline:

October 20, 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.

November 3, 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”.

November 6, 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 November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 1st 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.

November 27, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

November 29, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

December 1, 2017: The Sustainable Development and Construction Department Assistant Director of Engineering has submitted a review comment sheet marked “Has no objections”.

BOARD OF ADJUSTMENT ACTION: DECEMBER 11, 2017

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm St., Dallas, TX
Brian Purcell, 2122 Midway Pl, Charlotte NC
Reed Kracke, 1918 S Wendover Rd, Charlotte, NC
Whitney Barlow, 1535 Stemmons Ave., Dallas, TX

APPEARING IN OPPOSITION: Tom Webber, 5919 Preston, Dallas, TX

MOTION #1: Agnich

I move that the Board of Adjustment suspend its rules and accept the evidence that is being presented today.

SECONDED: Bartos

AYES: 5 - Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Bartos

I move that the Board of Adjustment, in Appeal No. **BDA 178-001**, on application of Rob Baldwin of Baldwin Associates, **grant** the request of this applicant to provide 96 off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code which require 192 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for a commercial amusement (inside) use only. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 96 spaces shall automatically and immediately terminate if and when the commercial amusement (inside) use is changed or discontinued.
- Limit the occupiable roof top area to no more than 2600 square feet.

SECONDED: Behring

AYES: 4 - Gambow, Agnich, Behring, Bartos

NAYS: 1 - Richardson

MOTION PASSED: 4 – 1

Break: 3:08 P.M.

Resumed: 3:17 P.M.

FILE NUMBER: BDA167-116(SL)

BUILDING OFFICIAL’S REPORT: Application of Roger Albright for a special exception to the off-street parking regulations at 6770 Abrams Road. This property is more fully described as Lot 1A, Block 1/5435, and is zoned CR, which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for a restaurant without drive-in or drive-through service use, office use, medical clinic or ambulatory surgical center use, personal service use, dry cleaner or laundry store use, general merchandise or food store 3500 square feet or less use, and theater use, and provide 664 of the required 781 parking spaces, which will require a 117 space special exception to the off-street parking regulations.

LOCATION: 6770 Abrams Road

APPLICANT: Roger Albright

REQUEST:

A request for a special exception to the off-street parking regulations of 117 spaces is made to transition uses that are/were within an existing shopping center (Creekside Shopping Center) that has approximately 72,000 square feet currently being remodeled (but not expanded), with office, medical clinic or ambulatory surgical center, restaurant without drive-in or drive through service, personal service, dry cleaner or laundry store, general merchandise or foot store 3,500 square feet or less, and theater uses, and to provide 664 (or 85 percent) of the 781 required off-street parking spaces on the subject site.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). 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.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 117 spaces shall automatically and immediately terminate if and when the restaurant without drive-in or drive-through service use, office use, medical clinic or ambulatory surgical center use, personal service use, dry cleaner or laundry store use, general merchandise or food store 3500 square feet or less use, and theater use that are changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Assistant Director of Engineering has no objections to the applicant's request.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community retail)
North: PD 65 (Planned Development)
South: R-7.5(A) (Single family residential 7,500 square feet)
East: CR (Community retail)
West: CR (Community retail)

Land Use:

The subject site is developed with a shopping center use much of which is currently being remodeled (Creekside Shopping Center). The area to the north is undeveloped; and the areas to the south, east and west are developed with retail uses.

Zoning/BDA History:

1. BDA023-125, Property at 6770 Abrams Road (the subject site)

On September 15, 2003, the Board of Adjustment Panel C granted a variance to the height regulations of 39' and imposed the following conditions: 1) Compliance with the submitted site plan is required; and 2) Compliance with a revised elevation to be submitted to the Board Administrator that shows installation of a flush mount antenna is required.

The case report stated the request was made to construct and maintain a 65' high cellular monopole tower on a site developed with retail uses.

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the off-street parking regulations of 117 spaces focuses on transitioning uses that are/were within an existing shopping center (Creekside Shopping Center) that has approximately 72,000 square feet currently being remodeled (but not expanded), with office, medical clinic or ambulatory surgical center, restaurant without drive-in or drive through service, personal service, dry cleaner or laundry store, general merchandise or foot store 3,500 square feet or less, and theater uses, and providing 664 (or 85 percent) of the 781 required off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirements:
 - Restaurant without drive-in or drive through service: As a main use, 1 space per 100 square feet of floor area. As a limited or accessory use, 1 space per 200 square feet of floor area.
 - Office use: 1 space per 333 square feet of floor area.
 - Office Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area.
 - Personal service: 1 space per 200 square feet of floor area.
 - Dry cleaner or laundry store: 1 space per 200 square feet of floor area.
 - General merchandise or foot store 3,500 square feet or less: 1 space per 200 square feet of floor area.
 - Theater: 1 space per 28 square feet of seating area.

- The application states among other things that the submitted professional engineer parking study shows that the uses within the center could support not only the requested 117 space reduction request but a 182 space reduction.
- On November 1 and December 1, 2017, the Sustainable Development and Construction Department Assistant Director of Engineering submitted review comment sheets marked “Has no objections”.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the restaurant without drive-in or drive through service, office, medical clinic or ambulatory surgical center, personal service, dry cleaner or laundry store, general merchandise or foot store 3,500 square feet or less, and theater uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 117 spaces (or 15 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 117 spaces shall automatically and immediately terminate if and when the restaurant without drive-in or drive through service, office, medical clinic or ambulatory surgical center, personal service, dry cleaner or laundry store, general merchandise or foot store 3,500 square feet or less, and theater uses are changed or discontinued, the applicant could lease the shopping center with these uses, and provide 664 (or 85 percent) of the 781 required off-street parking spaces.

Timeline:

- August 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.
- October 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- October 9, 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 October 25th deadline to submit additional evidence for staff to factor into their analysis; and the November 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- October 31, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Sustainable

Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

November 1, 2017: The Sustainable Development and Construction Department Assistant Director of Engineering has submitted a review comment sheet marked "Has no objections".

November 13, 2017: The Board of Adjustment Panel C conducted a public hearing on this application. The applicant submitted additional information to the Board at the public hearing (see Attachment A). The Board delayed action on this application until their next public hearing to be held on December 11, 2017.

November 17, 2017: The Board Administrator wrote the applicant a letter of the board's action; the November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 1st deadline to submit additional evidence to be incorporated into the Board's docket materials.

November 22, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application and at the November 13th public hearing (see Attachment B).

November 27, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

December 1, 2017: The Sustainable Development and Construction Department Assistant Director of Engineering has submitted a review comment sheet marked "Has no objections".

BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2017

APPEARING IN FAVOR: Roger Albright, 3301 Elm Street, Dallas, TX
Cory McCord, 6904 Blake Dr., Arlington, TX
Christy Lambeth, 400 S. Houston St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: David Cossum, Director, 1500 Marilla St., Dallas, TX

MOTION: **Agnich**

I move that the Board of Adjustment in Appeal No. **BDA 167-116** hold this matter under advisement until **December 11, 2017**.

SECONDED: **Brooks**

AYES: 5 – Richardson, Gambow, Agnich, Behring, Brooks

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: DECEMBER 11, 2017

APPEARING IN FAVOR: Roger Albright, 3301 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 167-116**, on application of Roger Albright, **grant** the request of this applicant to provide 501 off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code which require 618 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for a restaurant without drive-in/drive-through service or theater uses only. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 117 spaces shall automatically and immediately terminate if and when the restaurant without drive-in/drive-through service use or theater use is changed or discontinued.

SECONDED: **Bartos**

AYES: 5 -Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-135(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the tree preservation regulations at 4300 Marvin D. Love Freeway. This property is more fully described as Tract 1, a 4.38 acre tract in Block 6048, and is zoned R-7.5(A), which requires mandatory landscaping. The applicant proposes to construct and maintain structures and provide an alternate tree mitigation plan, which will require a special exception to the tree preservation regulations.

LOCATION: 4300 Marvin D. Love Freeway

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A special exception to the tree preservation regulations is requested in conjunction with, according to the application, trees removed without a permit and allowing “a time extension for completion of tree mitigation” on a property that is undeveloped.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the 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:

Denial

Rationale:

- The City of Dallas Chief Arborist recommends denial of the request in that he does not believe that strict compliance with the tree preservation regulations places 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: TH-1(A) (Townhouse)
West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

The subject site is undeveloped. The areas to the north, south, and west are developed with single family uses; and the area to the east is the Marvin D. Love Freeway.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The request for a special exception to the tree preservation regulations focuses on trees removed without a permit on the undeveloped site, and allowing “a time extension for completion of tree mitigation”, more specially, fully mitigating trees removed on the subject site within two years of December 11, 2017.
- On November 30th, the City of Dallas Chief Arborist has submitted a memo regarding this request (see Attachment B).
- The Chief Arborist’s memo states the following with regard to “request”:
 - The applicant is requesting a special exception to the tree preservation regulations of Article X for a time extension to complete required tree replacement. As stated in Attachment A, the special exception is a request to allow for ‘an extended time in which to plant trees on the property to mitigate trees that were removed without a permit.’ The applicant requests up to two years to plant the required trees, but does not request a reduction in the amount of inches to be mitigated.
- The Chief Arborist’s memo states the following with regard to “provision”:
 - The applicant has proposed a two year extension to the allotted time provided in Article X. On June 7, 2017, a tree removal application was issued to the owner for protected trees which had been removed during the week prior to that date. Under the application, the Article X regulations for timing (Sec. 51A-10.134(5))

was enacted on the property which requires mitigation within 30 days, or up to six months upon request. As of today, the six month time period is near to completion.

- The applicant has the remaining ability by ordinance to request an extension through the building official to extend to no more than 18 months from removal, with the provision of a letter of credit or performance bond for the total cost of purchasing and planting replacement trees on the property.
- Article X provides alternative methods of compliance for when it is 'impracticable or imprudent' to plant a replacement tree on the lot. These include planting within one mile of the property, donating trees to the Park Department, creation of a conservation easement, or payment into the Reforestation Fund. The owner had discussed the option for planting trees with the Park Department, but the department used its allowed discretion in not receiving the trees at the time
- The Chief Arborist's memo states the following with regard to "deficiency":
 - The property has a tree mitigation requirement based on the removal of 70 protected trees for a total of 1,181 inches. The Reforestation Value equivalent is \$98,656.00. Additional protected trees remain on the property and may become additional tree mitigation with any future development. A tree survey has not yet been created for the remaining trees so we cannot state the potential future mitigation total.
 - The request is for an extension of time to plant on the property, but it is not expected that full tree replacement could be fulfilled by planting on the property only. There is no provided conceptual plan or development plan design to provide any assessment of how many inches of protected trees may be planted on the property with construction. Any additional tree mitigation could occur by available alternative means authorized in Article X or with a plan that is confirmed at the discretion of the Board.
- The City of Dallas Chief Arborist recommends denial of the request for a special exception, and makes the following comments:
 - In the development of the 4.4 acre property with restrictions for slope and a creek, it is not expected that full tree replacement will occur on the property as landscape space for planting trees will be reduced.
 - Only a portion of the current mitigation, and any additional mitigation, could be planted on the property.
 - The ordinance provisions for alternative methods of completion allow options for the mitigation which could not be applied on to the tree removal property.
 - Strict compliance with the regulations does not place an unreasonable burden on the use of the property.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (i.e. mitigating all protected trees removed on the site within 30 days – 18 months from removal) will unreasonably burden the use of the property.
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant the applicant's request, and impose a condition that the applicant must fully mitigate trees removed on the subject site by December 11,

2019, the applicant would be granted exception from full compliance to the tree preservation regulations – that being additional time (two years from the hearing date: December 11, 2017) in which to fully mitigate trees removed on the subject site.

Timeline:

September 27, 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.

November 3, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 6, 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 November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 1st 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.

November 22, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

November 27, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, 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.

November 30, 2017: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: DECEMBER 11, 2017

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm St., #B, Dallas, TX

APPEARING IN OPPOSITION: Patricia McQuaid 4416 Dove Creek Way, Dallas, TX
Darrin Lacy, 4518 Dove Creek Way, Dallas, TX

MOTION: Bartos

I move that the Board of Adjustment, in Appeal No. **BDA 167-135**, on application of Robert Baldwin, **deny** the special exception to tree preservation requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burden the use of the property; and the special exception will adversely affect neighboring property.

SECONDED: Behring

AYES: 5 -Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-137(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a variance to the front yard setback regulations at 6480 Royalton Drive. This property is more fully described as Lot 4A, Block B/5500, and is zoned R-16(A), which requires a front yard setback of 35 feet. The applicant proposes to construct and maintain a structure and provide a 5 foot front yard setback, which will require a 30 foot variance to the front yard setback regulations.

LOCATION: 6480 Royalton Drive

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a variance to the front yard setback regulations of 30’ is made to construct and maintain a pool structure, which is to be located 5’ from one of the site’s two front property lines (Lavendale Avenue) or 30’ into this 35’ front yard setback on a site that is being developed with a single family home.

STANDARD FOR A VARIANCE:

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

Denial

Rationale:

- While staff recognized that the subject site is unique and different from most lots in the R-16(A) zoning district in that it is irregular in shape and restrictive in area due to having two, 35' front yard setbacks, staff concluded that the applicant had not substantiated how this lot could not be developed in a manner commensurate with the development upon other parcels of land with the same R-16(A) zoning district. The site is over 23,000 square feet in area (or approximately 7,000 square feet larger than the typical lot in this zoning district), and the applicant has represented that the single family home being developed on the site has "house size" of approximately 6,900 square feet which is over 1,000 square feet larger than the average square footage of 12 other "built lots" the applicant identified at approximately 5,600 square feet.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (Single family district 16,000 square feet)
North: R-16(A) (Single family district 16,000 square feet)
South: R-16(A) (Single family district 16,000 square feet)
East: R-16(A) (Single family district 16,000 square feet)
West: R-16(A) (Single family district 16,000 square feet)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for variance to the front yard setback regulations of 30' focuses on constructing and maintaining an approximately 900 square foot pool structure, which is to be located 5' from one of the site's two front property lines (Lavendale Avenue) or 30' into this 35' front yard setback on a site being developed with a single family home with a house size of approximately 6,900 square feet.
- The property is located in an R-16(A) zoning district which requires a minimum front yard setback of 35 feet.
- The subject site is located at the northwest corner of Royalton Drive and Lavendale Avenue. Regardless of how the structure is proposed to be oriented to front Royalton Drive, the subject site has 35' front yard setbacks along both street frontages. The site has a 35' front yard setback along Royalton Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 35' front yard setback along Lavendale Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 10' side yard setback is required. But the site's Lavendale Avenue frontage that would function as a side/rear yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots to the west that front/are oriented southward towards Lavendale Avenue.
- The originally submitted site plan noted a 40' platted building line on Royalton Drive and a 30' platted building line on Lavendale Avenue.
- The Building Inspection Senior Plans Examiner/Development Code Specialist submitted made notations on the originally submitted site plan (see Attachment A). This plan notes an area along Lavendale Avenue labeled: "A re-plat will request to remove the 30' building line here only. Within this area then is a 35' FYSB for which a 29' 6" variance is being requested"; and an area on Lavendale Avenue labeled: "Within this area is a front yard, with a 30' platted B.L.".
- The only structure requiring variance to the front yard setback regulations is the pool structure in the Lavendale Avenue 35' front yard setback.
- A revised site plan represents that the "proposed pool location" with "36" raised beam backdrop wall on pool beam" located 5' from the Lavendale Avenue front property line which will require a 30' variance to the front yard setback regulations on Lavendale Avenue.
- The applicant has submitted a document that represents that the single family home being developed on the site has "house size" of approximately 6,900 square feet, and that the average square footage of 12 other "built lots" the applicant identified is approximately 5,600 square feet.
- According to DCAD records, the "main improvement" for property addressed at 6480 Royalton Drive is a structure built in 2017 with 6,929 square feet of total area/living area, and the following "additional improvements": a 60 square foot outbuilding, a

647 square foot outdoor living area, a 299 square foot attached garage, and a 567 square foot attached garage.

- The subject site is flat, irregular in shape, and according to the submitted application is 0.54 acres (or approximately 23,522 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- The subject site has two 35' front yard setbacks and two 10' side yard setback. Most lots in the R-16(A) zoning district have one 35' front yard setback, two 10' side yard setbacks, and one 10' rear yard setback; this site has two 25' front yard setbacks and two 5' side yard setbacks.
- 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-16(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-16(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 pool structure that would be located 5' from the site's Lavendale Avenue front property line (or 30 into this 35' front yard setback).

Timeline:

- August 10, 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.
- November 3, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 6, 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 November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 1st 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.”

November 9, 2017: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded the applicant’s originally submitted site plan with notations of setbacks on this site to the Board Administrator (see Attachment A).

November 20, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments B and C).

November 22, 2017: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a copy of a revised application and Building Official’s report to the Board Administrator (see Attachment D).

November 20, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment E).

November 27, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, 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: DECEMBER 11, 2017

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm St., #B, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move that the Board of Adjustment, in Appeal No. **BDA 167-137**, on application of Robert Baldwin, **grant** the 30-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: Behring

AYES: 4 - Richardson, Gambow, Behring, Bartos

NAYS: 1 - Agnich

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-138(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Reeves to appeal the decision of the administrative official at 6821 South Ridge Drive. This property is more fully described as Lot 10, Block L/2984, and is zoned R-7.5(A), NSO 3, which requires that the building official shall deny the issuance of a building permit when the application does not comply with the zoning regulations. The applicant proposes to appeal the decision of an administrative official in the denial of the issuance of a building permit.

LOCATION: 6821 Southridge Drive

APPLICANT: Robert Reeves

December 11, 2017 Public Hearing Notes:

- The applicant submitted additional written materials to the Board members at the hearing.

REQUEST:

A request is made to appeal the decision of the administrative official, in this particular application, the Building Official, where the submitted application states “Site is located in Neighborhood Stabilization Overlay District #3 which prohibits garages from having access from the rear of the property. A permit for a carport was denied on 10/3/2017. A carport is not a garage” on a site that is being developed with a single family home.

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).

Zoning:

Site: R-7.5(A)(NSO 3) (Single family residential 7,500 sq ft)(Neighborhood Stabilization Overlay)
North: R-7.5(A)(NSO 3) (Single family residential 7,500 sq ft)(Neighborhood Stabilization Overlay)
South: R-7.5(A)(NSO 3) (Single family residential 7,500 sq ft)(Neighborhood Stabilization Overlay)
East: R-7.5(A)(NSO 3) (Single family residential 7,500 sq ft)(Neighborhood Stabilization Overlay)
West: R-7.5(A)(NSO 3) (Single family residential 7,500 sq ft)(Neighborhood Stabilization Overlay)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- 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:

- October 10, 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.
- November 3, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 6, 2017: The Board Administrator emailed the applicant the following information:
- an attachment that provided the appeal date and panel that will consider the application; the November 22nd deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of application); and the December 1st 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.”

November 27, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, 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.

December 1, 2017: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

December 1, 2017: The Assistant City Attorney assisting the Building Official on the appeal submitted documentation to the Board Administrator (see Attachment B).

BOARD OF ADJUSTMENT ACTION: DECEMBER 11, 2017

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Dallas, TX
Vincent Chan, 6742 E Mockingbird Lane, Dallas, TX

APPEARING FOR THE CITY: David Cossum, Director, 1500 Marilla St., Dallas, TX
Kristen Monkhouse, Asst. City Attorney, 1500 Marilla St., Dallas, TX
Megan Wimer, Asst. Bldg. Official, 320 E. Jefferson, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Agnich

I move that the Board of Adjustment suspend its rules and accept the evidence that is being presented today.

SECONDED: Bartos

AYES: 5 - Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Bartos

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. **BDA 167-138**, on application of Robert Reeves, 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: Agnich

AYES: 4 - Richardson, Agnich, Behring, Bartos

NAYS: 1 - Gambow

MOTION PASSED: 4 – 1

FILE NUMBER: BDA167-142(JM)

BUILDING OFFICIAL’S REPORT: Application of Gerardo Ornelas for a variance to the front yard setback regulations, and special exceptions to the fence standards at 2802 Lourdes Street. This property is more fully described as Lot 9, Block 5/6170, and is zoned R-7.5(A), which requires a front yard setback of 15 feet, and limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and/or maintain a structure and provide a 5 foot front yard setback, which will require a 10 variance to the front yard setback regulations, and to construct and/or maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards.

LOCATION: 2802 Lourdes Street.

APPLICANT: Gerardo Ornelas

REQUEST:

The following requests have been made on a site that is being developed with a single family home:

- 4. A request for a variance to the front yard setback regulations of 10’ is made to construct and maintain a one-story single-family home structure, part of which would

be located 5' from one of the site's two front property lines (Westmount Avenue) or 10' into this 15' front yard setback;

5. A request for a special exception to the fence standards related to fence height of 4' is made to construct and maintain a fence higher than 4' in height in the site's Westmount Avenue 15' front yard setback– an 8' solid wood fence with crown; and,
6. A request for a special exception to the fence standards related to fence materials is made to construct and maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned 8' high solid wood fence with crown along Westmount Avenue) located on the front lot line (or less than 5' from this front lot line).

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:

- i. 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;
- ii. 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
- iii. 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 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 (fence standards):

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.

STAFF RECOMMENDATION:

Denial

Rationale:

- While staff recognized that the subject site is unique and different from most lots in the R-7.5(A) zoning district in that it has a restrictive in area due to having two front yards, one 25’ front yard setback along Lourdes Street and one 15’ front yard setback along Westmount Avenue, staff concluded that the applicant had not substantiated how this lot could not be developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning district. The site is over 9,000 square feet in area (or approximately 1,500 square feet larger than the typical lot in this zoning district).

BACKGROUND INFORMATION:

Zoning:

- Site: R-7.5(A) (Single family district 7,500 square feet)
- Northwest: R-7.5(A) (Single family district 7,500 square feet)
- Northeast: RR Regional Retail District (lot sizes vary)
- Southeast: PD No. 714, Subdistrict 5 (lot sizes vary)
- Southwest: PD No. 714, Subdistrict 5 (lot sizes vary)
- West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is being developed with a single family home. The areas to the north and west are developed with single family uses. Warehouses exist to the northeast and southwest with undeveloped land to the southeast.

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 (variance to required front yard):

- This request for variance to the front yard setback regulations of 10’ focuses on constructing and maintaining a one-story single family structure with approximately 2,330 square feet of floor area, part of which is to be located 5’ from one of the site’s two front property lines (Westmount Avenue) or 10’ into this 15’ front yard setback.
- The site is located at the southwest corner of Lourdes Street and Westmount Avenue within an R-7.5(A) zoning district which requires a minimum front yard

setback of 25 feet. The subject site has a 25' front yard setback along Lourdes Street and a 15' front yard setback along Westmount Avenue.

- The site has a 25' front yard setback along Lourdes Street, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 15' front yard setback along Westmount Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. However, the site's Westmount Avenue frontage that functions as a side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots to the south that front/are oriented eastward towards Westmount Avenue and zoned PD No. 714, Subdistrict 5 (which requires a 15' front yard setback).
- The submitted scaled site plan indicates a footprint located approximately 5' from the Westmount Avenue front property line 10' into this 15' front yard setback. (No encroachment is shown or requested to be located in the site's Lourdes Street 25' front yard setback).
- According to DCAD records, the "main improvement" for property addressed at 2802 Lourdes Street is a structure built in 2016 with 1,966 square feet of living/total area, and that "additional improvements" is a 337 square foot attached garage.
- According to calculations made by the Board Senior Planner from the submitted site plan, approximately 600 square feet of the floor area is located within the Westmount Avenue 15' front yard setback.
- The site is rectangular in shape (approximately 180' x 50') and 9,000 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The 50' wide subject site has 30' of developable width available once a 15' front yard setback is accounted for on the east (Westmount Avenue) and a 5' side yard setback is accounted for on the west. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width.
- 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-7.5(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-7.5(A) zoning classification.

- If the Board were to grant the 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 in this case is a single-family home that would be located 5' from the site's Westmount Avenue front property line (or approximately 10' into this 15' front yard setback).
- Granting this request for a variance to the front yard setback regulations will not provide any relief to existing noncompliance on the site related to visual obstruction regulations.

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- The focus of the two requests for special exceptions to the fence standards (one is related to height of up to 4' and one is related to fence materials) is constructing and maintaining an 8' solid wood fence with crown in the site's Westmount Avenue 15' front yard setback on the front lot line on a site being developed with a single family home.
- The site is located at the southwest corner of Lourdes Street and Westmount Avenue within an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet. The subject site has a 25' front yard setback along Lourdes Street and a 15' front yard setback along Westmount Avenue.
- 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.
- Additionally, the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
- The site has a 25' front yard setback along Lourdes Street, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 15' front yard setback along Westmount Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. However, the site's Westmount Avenue frontage that functions as a side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots to the south that front/are oriented eastward towards Westmount Avenue and zoned PD No. 714, Subdistrict 5 (which requires a 15' front yard setback).
- The applicant has submitted two site plan/elevation documents of the proposal fence in the front yard setback with notations indicating that the proposal reaches a maximum height of 8' with a fence panel having a surface area that is less than 50 percent open and located less than 5' from this front lot line – an 8' high solid wood fence approximately 143' in length located on this front lot line.

- The Board Senior Planner conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a front yard setback with no apparent Board of Adjustment history/action.
- As of December 1, 2017 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 4' and to location and materials on Westmount Avenue will not adversely affect neighboring property.
- Granting these special exceptions to the fence standards related to height of up to 4' and to location and materials in certain areas on the site with a condition imposed that the applicant complies with the submitted site plan/elevation documents, would require the proposal exceeding 4' in height in the front yard setbacks with solid fence panels on the front lot line to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

October 20, 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.

November 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 6, 2017: The Board Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 22nd deadline to submit additional evidence for staff to factor into their analysis; and the December 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standards that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 28, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Director of Engineering, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialists, 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: DECEMBER 11, 2017

APPEARING IN FAVOR: Gerardo Ornelas, 2802 Lourdes St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Bartos

I move that the Board of Adjustment, in Appeal No. **BDA 167-142**, on application of Gerardo Ornelas, **grant** the 10-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 site plan is required.

SECONDED: Agnich

AYES: 5 - Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Bartos

I move that the Board of Adjustment, in Appeal No. **BDA 167-142**, on application of Gerardo Ornelas, **grant** the request of this applicant to construct and/or maintain an eight-foot high fence as a special exception to the height requirement for fences 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 site plan and elevations is required.

SECONDED: Agnich

AYES: 5 - Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #3: Behring

I move that the Board of Adjustment, in Appeal No. **BDA 167-142**, on application of Gerardo Ornelas, **grant** the request of this applicant to complete and maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as a special exception to the surface area openness requirement for fences 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 site plan and elevations is required.

SECONDED: Agnich

AYES: 5 - Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Richardson

I move to adjourn this meeting.

SECONDED: Agnich

AYES: 5 – Richardson, Gambow, Agnich, Behring, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

4:59 P. M. - Board Meeting adjourned for **December 11, 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.